

B.M.D. Agrawal

# Right to Information



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# **The Right to Information**



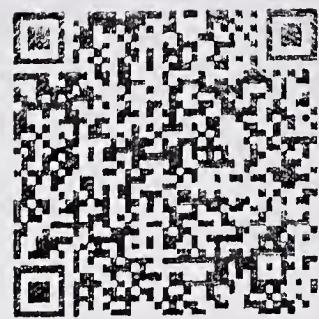
# **The Right to Information**

**B.M.D. Agrawal**



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# Foreword

The Right to Information is increasingly recognized the world over as a basic freedom which makes any governance system that claims to be a system representing the will of its people. As the Prime Minister of India, Dr. Mammoohan Singh put it, on introducing the Bill in Parliament on May 11, 2005

*“I believe that the passage of this Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which will ensure that benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man’s concern to the heart of all processes of governance, an era which will truly fulfill the hopes of the founding fathers of our Republic.”*

The Right to Information is now a ‘Fundamental Right’ of a free citizenry the world over, from which other basic human rights can flow, and no society can claim to be truly free unless it has both the instrument and the practice of this right whether it be called the freedom of information as it is in most countries where it is practiced at present, or the right to information which it has become after it has been so declared in the world’s largest and most intense democracy with the enforcement of India’s Right to Information Act in October 2005.

Advocate BMD Agrawal has, therefore, acted at the right movement in publishing his “The Right to Information” at this stage, when an assessment can be made of the history of the use of this freedom and the experience of different sections of society, with the diverse requirements of different States, in its actual implementation.

The Right to Information Act in India has been described by many as the most radical legislation in this country since the passage

of the Constitution of India in 1950. In initiating the process that culminated in the passage of this Bill, Hon'ble Justice Matthew has in his ruling on behalf of the Bench in *Raj Narain vs State of UP (1975) 4 SCC 428* observed that,

*“In a government of responsibility like ours, where all agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries..... to cover with veil of secrecy the common routine business, is not in the interest of public”*

Even if one were not to agree with this definition in its entirety, the test of the law's acceptance by the public in general came in mid-2006 when the very Government which had passed this legislation through India's Parliament sought to bring amendments which many thought of as curtailing of the Right guaranteed by the original Act. The widespread public debate both in the visual and written media as well as the general public outcry in neighbourhoods which included slum areas persuaded the Government of India that no amendment would be considered in future without wide public consultation. In other words, the Government that, in fact, sponsored the Act recognized that this Legislation had passed beyond its domain and had been accepted by India's public as its own. No legislature could have wished for more from any legislation.

Although, the exercise of the freedom of information has now matured and even fully developed in several societies, yet it is relatively nascent in most developing countries. These countries moreover, like our own, are in many cases those which are only now emerging from the incubus of a colonial hierarchy, structured to exploit the skills of its people at the least cost to the colonial masters and the economic ruin of the colonized populace. In such a system transparency was of no account and accountability encouraged only to itself, never to the public. Hence we have insidious legislations like India's Official Secrets Act of 1923, which clearly defined the public as enemy of the State. It is for this reason

that India's experimentation with this Right, which is in its ninth year of operation, and seen varying results within the federal structure of India, has been put under such close scrutiny by our own intellectual leadership and the international community. It was the focus of discussion in Mexico's celebration of its transparency week in the first week of October 2013.

Advocate BMD Agrawal's "The Right to Information" examines India's experience from its evolution from an esoteric freedom of a highly enlightened section of society aloof from the humdrum of the prosaic world, to its recognition as a fundamental right for all. It highlights with detailed discussions the bearing that this will have not only on social development through promoting equality but also on economic development while protecting the essential requirements like the need for food and water. This book will form an essential reference work for all students of this legislation to help chart a roadmap to further strengthen the basis of the exercise of this right by all.

*Wajahat Habibullah*  
Chief Information Commissioner (2005-2010)  
Central Information Commission  
Government of India



# Preface

The Right to Information is a Fundamental Right under Article 19 [1] (a)- freedom of speech and expression of the Constitution of India. It is well settled. There is no dispute or illusion about it.

After crossing all the bridges before enacting any law, The Right to Information Act, 2005 is in force with effect from 15<sup>th</sup> June 2005 and in respect of certain sections with effect from 10-10-2005 “The Act is to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities.”

The RTI Act, 2005 is a vital legislation from all points of view and shades of thought including the democratic setup of our country. It has immense potentialities and expectations. There is imperative need to know, to understand, to implement it with all sincerity of purpose.

In order to create awareness, acceptance and effective implementation an endeavor has been made covering following subjects with Appendices:

Statement of Objects and Reasons and Genesis of the Movement.

A Fundamental Right - National and International

Voters' Right of Information

Salient Features

Case Studies and Experiences

Road Ahead.

I have taken help from reported/ unreported Judgments of the Honourable Supreme Court, High Court and information available on Internet particularly of Chief Information Commission and media reports etc. Further, my personal experiences and feedback

available with me have also contributed in presenting the book. It will be worth if it serves its purpose. Hope it will stand the test of its expectation and contribution for the cause.

I am particularly indebted to Shri Wajahat Habibullah for writing the Foreword. I express my deep sense of gratitude to him.

**B.M.D. Agrawal**

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# **Lifeline of any Democracy**

**INDIA WON** independence in 1947 and became a republic in 1950.

Since then the issue relating to The Right to Information has travelled through various Courts, Forums, Committees etc. and finally the President of India assented on 15.6.2005 and was published in Gazette of India on 21.6.2005 and came into force on 13.10.2005.

## **Genesis**

Prior to The Right To Information Act 2005, the following States had Right to Information Act as under:-

	<i>Name of States</i>	<i>Year</i>
1.	Goa	1997
2.	Tamilnadu	1997
3.	Karnataka	2000
4.	Rajasthan	2000
5.	NCT of Delhi	2001
6.	Maharashtra	2002
7.	Assam	2002
8.	Madhya Pradesh	2003
9.	Jammu & Kashmir	2009

Demands for Right to Information Act at central level grew extensively.

Social groups like Mazdoor Kishan Shakti Sangathan (MKSS) and the National Campaign for Peoples Right to Information took active interest. In 1993, Consumer Education and Research Council,

Ahmedabad proposed first Draft bill “The Right To Information”. Later on, the Press Council of India presented draft model law on the Right To Information Act 1996.

In Jan 1997 the Government set up a working group on ‘Right To Information Act’ under the chairmanship of Late Shri H. D. Shourie. The Chief Ministers Conference on ‘Effective and Responsive Government’ held in Delhi in 1997 also endorsed the importance of Right To Information.

The report of the working group was placed before the committee of Secretaries which endorsed the legislative proposal subject to certain modifications.

Finally, the draft bill was submitted to the Group of Ministers prior to approval of the Cabinet. The Cabinet approved the proposal in its meeting held on 13th May, 2000.

Afterwards, the Freedom of Information Bill 2000 was presented in the Lok Sabha on 25th July 2000. The bill was referred to the Standing Committee on Home Affairs for examination and report on 14th September 2000. The committee presented its report to the Parliament on 25th July 2001 with recommendations to make certain changes. The Bill was passed by Parliament in December 2002 and got the assent of the President on 6th January 2003, but the Freedom of Information Act 2002 was not enforced.

The Government, in its National Common Minimum Programme (NCMP), *inter-alia* declared that it would strive for a corruption free, transparent and accountable governance. The NCMP envisaged enactment of a more progressive, participatory and meaningful law in place of the Freedom of Information Act, 2002. In pursuance of the above commitment, the Government assigned to the National Advisory Council (NAC) the task of suggesting constructive changes in the Act of 2002.

In furtherance thereof, The Right To Information Bill 2004 was introduced in the Lok Sabha on 23 December 2004. The Parliamentary Standing Committee on personnel, public grievances, law and justice presented its report on The Right To Information

Bill 2004 to the Parliament on 21 March 2005.

Finally, The Right To Information Act 2005 was passed, and came into force w.e.f. 13.10.2005. The Freedom of Information Act 2002 was repealed.

The Delhi High Court in the matter of Delhi Development Authority vs. Central Information Commission and another (WP (c) 12714/2009) through Hon'ble Mr. Justice B.D. Ahmed agreed by Hon'ble Justice Ms. Veena Birbal has said vide judgement dt. 21.5.2010.

*“Information is power. This is truer now, in this information age, than ever before. In a democracy this power of information which the public authorities possess is to be shared with the people. But at the same time, not every piece of information is to be made public. There is the public interest and democratic purpose in dissemination of information on the one hand and the competing private right and national interests in general non-disclosure, on the other. This is recognized in the preamble to the Right to Information Act, 2005.*

*Further, the flow of information is not to be an unregulated flood. It needs to be controlled just as the flow of water is controlled by a tap. Those empowered to handle this ‘tap’ of information are imbued with great power. Under the said Act, this power is to be exercised by the Information Commission (State and Central). But the power is clearly not plenary, unrestricted, limitless or unguided. The Information Commissions are set up under the said Act and they have to perform their functions and duties within the precincts marked out by the legislature. “*

Before detailed analytical examination is attempted, it is important to quote the preamble of the Right to Information Act 2005.

*An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote*

*transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.*

*WHEREAS the Constitution of India has established democratic Republic.*

*AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;*

*AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;*

*AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;*

*NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.*

*BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows :-*

After analysing the statement, it can be put as under-

- (a) this is applicable to citizens  
(For citizenship Part II, Article 5 to 11 of the Constitution of India may be referred)
- (b) to secure access to information (as per section 2(f) of the Act)
- (c) Under the control of Public Authorities (as per section 2(h) of the Act)
- (d) to promote transparency and accountability in the

working of public authority

- (e) Constitution of Chief Information Commission (as per section 2(b) of the Act) and State Information Commission (as per section 20(l) of the Act)
- (f) Institution of Democratic Republic
- (g) Recognition of requirement of democracy
  - (i) Informed citizenry  
(Citizens should be fully informed)
  - (ii) Transparency of information being vital for functioning of democracy
  - (iii) To contain corruption  
(By implication corruption is there in our democratic republic)
  - (iv) Accountability of Government and instrumentalities to governed (citizens)  
(State has been defined in Article 12 of the Constitution of India)
- (h) There should not be conflict between revelation of information and other public interest including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. There should be harmony between the two.
  - (i) to provide certain (not all) information to citizens
    - (i) Who desire to have it.  
(Section 3 and 4 Right to Information Act)
    - (ii) For the purpose of sub-section (1), every information shall be disseminated widely and in such form and manner which be easily accessible to the public.

(iii) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

**Explanation :-** For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority. Dissemination of information suo-moto also.

Thus, The Right To Information Act 2005 has given Right to Information both suo-moto as well as on request with institutional support which is a lifeline of our democracy.

# **A Fundamental Right : National & International**

**THE PREAMBLE** of the Constitution of India provides among other things, liberty of thought, expression, belief, faith and worship. **Article 19** of the Constitution deals with protection of certain rights regarding freedom of speech, etc.-

(1) All citizens shall have the right-

(a) to freedom of speech and expression.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

## **Case Laws**

There are number of case laws decided by the Supreme Court of India that Right To Information is a part of Constitution's right of freedom of speech and expression [Article 19(1) (a)]

It is worth quoting extracts of such case laws of the Supreme Court decided before the enactment of the Right To Information Act 2005.

- State of U.P. vs Raj Narain

In the Raj Narain case the Constitution Bench considered a question-whether privilege can be claimed by the Government of Uttar Pradesh under Section 123 of the Evidence Act in respect of

what has been described for the sake of brevity to be the Blue Book summoned from the Government of Uttar Pradesh and certain documents summoned from the Superintendent of Police, Rae Bareli, Uttar Pradesh? The Court observed as under:-

“In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing...”

- Indian Express Newspapers (Bombay) Pvt. Ltd. vs Union of India (Air 1986 SC 515)

In another case dealing with the validity of customs duty on the newsprint in context of Article 19(1)(a) the Supreme Court observed (in para 32) thus:

“The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgements...”

- In the case between Secretary, Ministry of Information and Broadcasting, Govt. of India vs Cricket Association of Bengal, the Supreme Court summarised the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2) thus :-

“The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-fulfilment. It enables people to contribute to debate on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts.

The Court further dealt with the right of telecast holding :-

“In a team event such as cricket, football, hockey etc., there is both individual and collective expression. It may be true that what is protected by Article 19(1)(a) is an expression of thought and feeling and not of the physical or intellectual prowess or skill. It is also true that a person desiring to telecast sports events when he is not himself a participant in the game, does not seek to exercise his right of self-expression. However, the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The former is the right of the telecaster and the latter that of the viewers. The right to telecast a sporting event will therefore also include the right to educate and inform the present and the prospective sportsmen interested in the particular game and also to inform and entertain the lovers of the game. Hence, when a telecaster desires to telecast a sporting event, it is incorrect to say that the free-speech element is absent from his right.”

- The S.P. Gupta vs Union of India case was decided by a seven-judge Constitution Bench of the Supreme Court, generally considered as having broken new ground and having added a fresh, liberal dimension to the need for increased disclosure in matters relating to public affairs. In that case, the consensus that emerged amongst the judges was that in regard to the functioning of Government, disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest. The Court held that the disclosure of documents relating to the affairs of State involves two competing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the State to protect the information relating to its crucial affairs. It was further held that, in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make his final decision depending upon the particular facts involved in each individual case. It is important to note that it was conceded that there are certain

classes of documents which are necessarily required to be protected, e.g. Cabinet's Minutes, documents concerning the national safety, documents which affect diplomatic relations or relate to some State secrets of the highest importance, and the like in respect of which the Court would ordinarily uphold Government's claim of privilege. However, even these documents have to be tested against the basic guiding principle which is that wherever it is clearly contra to the public interest for a document to be disclosed, then it is in law immune from disclosure. (Paras 73 and 74 at pp. 284-286)

What then is the test? To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers in Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.”

- In *Dinesh Trivedi M.P. and others v. Union of India and Others*, the Court dealt with a petition for disclosure of a report submitted by a Committee established by the Union of India on 9th July 1993 which was chaired by erstwhile Home Secretary Shri N. N. Vohra which subsequently came to be popularly known as Vohra Committee. During July, 1995, a known political activist Naina Sahni was murdered and one of the persons arrested happened to be an active politician who had held important political posts and newspaper reports published a series of articles on the criminalisation of politics within the country and the growing links between political

leaders and mafia members. The attention of the masses was drawn towards the existence of the Vohra Committee Report. It was suspected that the contents of the Report were such that the Union Government was reluctant to make it public.

In the said case, the Court dealt with citizen's rights to freedom and observed "in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare". The Court also observed "democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant."

- In the Peoples Union of Civil Liberties and another vs Union of India and others, the Court declared:

"Right of information is a facet of speech and expression as contained in Article 19(1)(a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right." (para 45)

"In keeping with the spirit of the Universal Declaration of 1948, the Preamble of the Constitution of India embodies a solemn resolve of its people to secure, *inter alia* its citizens, liberty of thought and expression. In pursuance of this supreme objective, Article 19(1)(a) guarantees to the citizens, the right to "freedom of speech and expression" as one of the fundamental rights listed in Part III of the Constitution. These rights have been advisedly set out in broad terms leaving scope for their expansion and adaptation, through interpretation, to the changing needs and evolving notions of a free society. " (para 48)

"Further, unlike Constitutions of some other developed countries, however, no fundamental right in India is absolute in nature. Reasonable restrictions can be imposed on such fundamental rights. Clause (2) of Article 19 of the Constitution reads thus

"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the

exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.” (para 53)

“Every right-legal or moral-carries with it a corresponding obligation. It is subject to several exemptions/exceptions indicated in broad terms. Generally, the exemptions/exceptions under those laws entitle the Government to withhold information relating to the following matters :

- (i) International relations;
- (ii) National Security (including defence) and public safety;
- (iii) Investigation, detection and prevention of crime;
- (iv) Internal deliberations of the Government;
- (v) Information received in confidence from a source outside the Government;
- (vi) Information, which, if disclosed, would violate the privacy of individual;
- (vii) Information of an economic nature (including Trade Secrets) which, if disclosed would confer an unfair advance on some person or concern, or, subject some person or Government to an unfair disadvantage;
- (viii) Information which is subject to a claim of legal professional privilege, e.g., communication between a legal adviser and the client; between a physician and the patient;
- (ix) Information about scientific discoveries. (para 49)

“A reasonable restriction on the exercise of the right is always permissible in the interest of the security of the State.” (para 64)

A perusal of these leading cases highlights the constitutional validity of Right To Information and its importance, relevance in democracy, as a fundamental right of a citizen of the country. It

helps not only the information seeker (citizens) but strengthens democracy as well as functioning of Government. Indians are facing crucial test of time in their history. Right to information is an oxygen for our survival.

## International Right

The experience of World War-II was so pervasive, that the UN (United Nations) General Assembly adopted resolution no. 59(T) in its first session in 1946 :-

“Freedom of Information is a fundamental right and the touch stone of all the freedoms to which the United Nations is consecrated.”

The Universal Declaration of Human Rights was adopted in UN General Assembly on 10th December 1948. Article 19 provides:

“Every one has the right to freedom of opinion and expression: this part includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Mr. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, elaborated on this in his 1995 Report to the UN Commission on Human Rights, stating:

“Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.”

In 1999, the Special Rapporteur has stated clearly that the right to access information held by public authorities is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), as the following excerpt from his latest report, in 1999, illustrates:

“The Special Rapporteur expresses again his view, and emphasizes, that everyone has the right to seek, receive and impart information and that this imposes a positive obligation on States to

ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems - including film, microfiche, electronic capacities, video and photographs-subject only to such restrictions as referred to in article 19, paragraph 3, of the International Covenant on Civil and Political Rights.”

International Covenant on Civil and Political Rights of 16<sup>th</sup> December 1966 provides (Article 19) :

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinion without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be such as are provided by law and are necessary

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

The Commonwealth Secretariat, organised an Expert Group Meeting in March 1999 to discuss the importance of freedom of information legislation. The Group adopted a Final Document setting out a number of principles governing freedom of information of which the first is as follows:

“Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.”

As early as 1969, the Japanese Supreme Court established the principle, in two high-profile cases, that the guarantee of freedom of expression found in Article 21 of Japan's Constitution, included a "right to know" (*shim kenri*).

The Supreme Court of Sri Lanka has also noted that a right to freedom of information, while not necessarily included within the guarantee of freedom of speech, for that "would be to equate reading to writing, and listening to speaking".

## Related Acts

It is worth while to mention the related Acts also for better appreciation of the Right to Information Act.

### 1. Official Secrets Act, 1923

While managing the affairs of the country, the Government has to face the menace of spying by the citizens of the country, may be in Government service or in private business or just thriving over this nefarious act. Spying has also been done by foreigners settled in the country, by visiting tourists, by the staff and officers employed in foreign missions, by missionaries and by organisations of Indian or foreign origin. To combat this nefarious act Government had been adopting various measures by making various provisions in different laws. The first step in this direction was the enactment of the Indian Official Secrets Act, 1889 which was amended by the Indian Official Secrets (Amendment) Act, 1904. Later, the Official Secrets Act, 1911 (1 and 2 George V. C. 28), a British Act was brought into force in India. But it has been recognised that it is unsatisfactory to have two separate laws in force simultaneously in India. Further, although the British Act of 1911 was in force in India, difficulties arose in applying it because of the use in it of English common law terms and so on. For these reasons it was felt desirable that there should be a single consolidated Act applicable to Indian conditions. To consolidate and amend the law relating to official secrets the Official Secrets Bill was put before the

Legislature. It was passed in 1923 and received the assent on 2nd April, 1923.

This act imposes restrictions on providing certain information.

## **2. Protection of Human Rights Act, 1993**

An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

“Human rights” [section 2(d)] means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

**3. Consumer Protection Act 1986** This has provided in section 6(b), objects of Central Council.

Objects of the Central Council : “The objects of the Central Council shall be to promote and protect the rights of the consumers such as the right to be informed about the quality, quantity, potency, purity, standard and price of goods (or services, as the case may be) so as to protect the consumer against unfair trade practices”

**4. Indian Evidence Act 1872** This provides in section 123 and 162 as under :

**Evidence as to affairs of the State** (Section 123) :- No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of the State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

**Production of documents** (Section 124) :- A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Supreme Court in the case of PUCL vs Government of India in para 74 (Air 2004 SC 1442) has observed :

“In order to claim immunity from disclosure of unpublished State documents, the documents must relate to affairs of State and disclosure thereof must be against interest of the State or public interest.”

Thus, in the matter of providing information, certain restrictions are obvious. It is not an absolute right.

# **Voter's Right to Information**

**MUCH BEFORE** the Right To Information Act 2005, the Supreme Court of India in the matter of civil appeal no. 7178 of 2001 with writ petition (C) No. 294 of 2001 between Union of India vs Association for Democratic Reforms and another (Air 2002 SC 2112) has decided this issue.

Following extracts may be quoted :

- Q. 1 Whether Election Commission is empowered to issue directions?
- Q. 2. Whether a voter - a citizen of this country - has right to get relevant information, such as, assets, qualification and involvement in offence for being educated and informed for judging the suitability of a candidate contesting election as MP or MLA?

The Supreme Court summed in this case the legal and constitutional position and stated that :-

The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

The limitation on plenary character of power is when the Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case, where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of this by leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite of situations that may emerge from time to time in a large democracy,

as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary direction, Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lai Omar's case*, the Court construed the expressions "superintendence, direction and control" in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.

The word "elections" includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate according to his thinking and opinion. As stated earlier, in Common Cause case (supra) the Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on affidavit a candidate is required to disclose the assets held by him at the time of election, voter can decide whether he could be re-elected even in cases where he has collected tons of money. Presuming, as contended by the learned senior counsel that this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in the country as the amount would be unaccounted. May be true, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.

To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little

man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under: -

- (i) Everyone shall have the right to hold opinions without interference.
- (ii) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, impart information and ideas of all kind, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

It is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the Executive to subserve public interest.

Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man-citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers. (para 56)

Further, the Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a

necessary part of his nomination paper furnishing therein information on the following aspects in relation to his/her candidature : -

- (i) Whether the candidate is convicted/ acquitted/ discharged of any criminal offence in the past-if any whether he is punished with imprisonment or fine?
- (ii) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more and in which charge is framed or cognizance is taken by the Court of law. If so, details thereof.
- (iii) The assets (immovable, movable, bank balance etc.) of a candidate and of his/her spouse and that of dependants.
- (iv) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.
- (v) The educational qualifications of the candidate. (para 58)

Thus a voter, a citizen of India has right to get relevant information about candidates seeking election as MP or MLA.

With the directions in para 58 (quoted above), the information about candidates available with the Election Commission is an information as per section 2(f) of the Right to Information Act 2005 and the voters have a right to ask the information in the interest of our democracy.

# Salient Features of the Act

IN THE foreword of Guide on Right to Information Act, 2005 Government of India has said:

*The commencement of the Right To Information regime four years back marked the dawn of a new era. Different stakeholders have played an important role in carrying forward the regime and have helped the government in inculcating a culture of transparency and accountability in the working of public authorities. It has been observed that information seekers face problems in making use of the Act and the officers of the public authorities face problems in implementing the provisions of the Act in right earnest.*

## **The Right to Information Act 2005 (Appendix - I) Definitions (Section 2)**

In this Act, unless the context otherwise requires,

2. (a) “**appropriate Government**” means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-
  - (i) by the Central Government or the Union territory administration, the Central Government;
  - (ii) by the State Government,
2. (b) “**Central Information Commission**” means the Central Information Commission constituted under sub-section (1) of section 12;
2. (f) “**Information**” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data

material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

The effect of the provisions and scheme of the RTI Act is to divide 'information' into three categories.

They are:

- (i) Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption (enumerated in clauses (b) and (c) of section 4(1) of RTI Act).
- (ii) Other information held by public authority (that is, all information other than those falling under clauses (b) and (c) of section 4(l) of RTI Act).
- (iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.

Information under the third category does not fall within the scope of RTI Act.

2. (h) "**Public Authority**" means any authority or body or institution of self-government established or constituted-

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any-
- (i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government.

Thus the definition of 'Public Authority' is wider than the definition of 'State' as per Article 12 of the Constitution of India which is as follows:

*In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the State and all local or other authorities within the territory of India or under the control of the Government of India.*

The inclusive definition of Public Authority is elaborate, viz.,

- (a) Body
  - (i) owned
  - (ii) controlled or
  - (iii) substantially financed

The Companies Act 1956 defines **company, existing company, private company, Government company**. There is absolutely no ambiguity about Government companies and public sector companies covered by the definition. Companies in private sector, either public limited or private limited may not be owned by Appropriate Government but controlled by Appropriate Government either directly or indirectly by applications of various laws. Banks are owned/controlled by Government. Banks do not subscribe to the share capital of companies but lend substantial finance and are represented in the Board of Directors. Moreover, substantial part of share capital is subscribed by public/shareholder. Thus, they are not beyond reach of the definition of public authority.

Besides, there are bodies like Societies and Trusts, which may not be owned by Appropriate Government but are controlled, directly or indirectly by Government.

The word ‘substantially financed’, directly or indirectly by funds provided by Appropriate Government have not been defined. What is the percentage? It is not clear. There are various schemes of Government to provide financial assistance to Societies and Trusts etc. Likewise, the word controlled is not clearly spelt. It calls upon the Government to issue clarification on this point. The underlying concept is to protect, promote the interest of public and to strengthen our democracy.

(i) **“Record”** includes-

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device;

2.(j) **“right to information”** means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

2. (k) **“State Information Commission”** means the State Information Commission constituted under sub-section (1) of section 15;

2. (m) “**State Public Information Officer**” means the State Public Information Officer designated under subsection (1) and includes a State Assistant Public Information Officer designated as such under subsection (2) of section 5;

Every public authority has named public information officer to give information to the public available with them. First Appellate Authorities have also been named.

2. (n) “**Third party**” means a person other than the citizen making a request for information and includes a public authority.

### **Right To Information and Obligations of Public Authorities**

3. Subject to the provisions of this Act, all citizens shall have the right to information.
4. (1) Every public authority shall-
  - (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;
  - (b) Publish within one hundred and twenty days from the enactment of this Act,-
    - (i) the particulars of its organisation, functions and duties;
    - (ii) the powers and duties of its officers and employees;
    - (iii) the procedure followed in the decision

making process, including channels of supervision and accountability;

- (iv) the norms set by it for the discharge of its functions;
- (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- (vi) a statement of the categories of documents that are held by it or under its control;
- (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- (ix) a directory of its officers and employees;
- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (xiii) particulars of recipients of concessions, permits or authorisations granted by it;
- (xiv) details in respect of the information, available to or held by it, reduced to an electronic form;
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) the names, designations and other particulars of the Public Information Officers;
- (xvii) such other information as may be prescribed;

and thereafter update these publications every year;

- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
- (d) provide reasons for its administrative or quasi judicial decision to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public

have minimum resort to the use of this Act to obtain information.

- (3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.
- (4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation :- For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicate the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

Thus, sec. 4 (1)(a) provides for computerisation of records, connectivity with internet, sec. 4 (1)(b) provides for publication of 17 categories of information, including updation of such publications every year. Concept of *suo-motu* provision of information is the base. Sec. 4(1) (c) provides for publication of relevant facts while formulating important policies or decisions which affect public.

Section 4 (3) and (4) provides for wide dissemination of every information with consideration of

- (a) Cost effectiveness
- (b) Local language
- (c) Most effective method of communication in local area.
- (d) Easy accessibility of information to the extent possible in electronic format.

- (e) Available free or at such cost of the medium or the print cost price as may be prescribed.

## Section 5

### Designation of Public Information Officers

#### It Provides

- (a) to designate Central/State Public information officers in all administrative units of offices to provide information.
- (b) to designate assistant Central/State information officers at each sub divisional or to sub-district level.
  - (i) to receive applications for information or appeal.
  - (ii) to forward the same to the Central/State Public Information Officers as the case may be or senior officer specified under section (1) of section 19 Act or Central/State information commission as the case maybe.
  - (iii) to deal with request from persons for information and to render reasonable assistance to the concerned person.
  - (iv) to seek the assistance of any other officer as considered necessary for the proper discharge of duties.
  - (v) to provide for rendering all assistance to such person so requested by Central/State Public Information Officers and to hold official responsible for any contravention as Central/State Public Information Officers.

It is important to highlight the provision of designating Asst. Central or State Information Commissioners at each sub-divisional or sub district level. This calls for review by Government. It may

be upto the lowest level of Government office at Block/Taluka level, Gram Panchayat sub post offices.

Second important aspect to highlight is obligation of C.P I.O./ S.P I.O. to render assistance to information seekers. Nature of assistance is open but it could mean more than legal obligation.

## Section 6

### Request for obtaining information

A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to-

- (a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;
- (b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,

**specifying the particulars of the information** sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

Applications should be in (1) writing (2) through electronic means (3) in English, or Hindi or in the official language of the area. There is no prescribed format (4) with prescribed fee (5) to C.P. I.O./S.P.I.O. or Asst. C.P.I.O./Asst. S.P I.O., as the case may be (6) specifying specific questions (a) there is no prescribed limit of no. of questions to be asked in one application. (b) Not required to give any reasons for requesting information or any other personal details except that may be necessary for contacting him/her.

In real life situations, certain C.P. I.O./S.P I.O. do attempt to call information seekers to their office contrary to letter and spirit of the Act. Information seekers are not to be called by information givers to their office.

Where an application is made to a public authority requesting for an information,-

- (i) which is held by another public authority; or
- (ii) the subject matter of which is more closely connected with the functions of another public authority,

The public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

## Section 7

### Disposal of Request

The following table shows the maximum time which may be taken to dispose off the applications in different situations:

Sr. No.	Situation	Time limit for disposing off applications
1.	Supply of Information in normal course.	30 days
2.	Supply of information if it concerns the life or liberty of a person.	48 hours
3.	Supply of information if the application is received through APIO.	05 days shall be added to the time period indicated at Sr. No. 1 and 2.

4.	<p>Supply of information if application/request is received after transfer from another public authority:</p> <p>(a) In normal course</p> <p>(b) In case the information concerns the life or liberty of a person.</p>	<p>(a) Within 30 days of the receipt of the application by the concerned public authority.</p> <p>(b) Within 48 hours of receipt of the application by the concerned public authority.</p>
5.	<p>Supply of information by organizations specified in the Second Schedule:</p> <p>(a) If information relates to allegations of violation of human rights.</p> <p>(b) In case information relates to allegations of corruption.</p>	<p>(a) 45 days from the receipt of application.</p> <p>(b) Within 30 days of the receipt of application.</p>
6.	<p>Supply of information if it relates to third party and the third party has treated it as confidential.</p>	<p>Should be provided after following the procedure.</p>
7.	<p>Supply of information where the applicant is asked to pay additional fee.</p>	<p>The period intervening between informing the applicant about additional fee and the payment of fee by the applicant shall be excluded for calculating the period of reply.</p>

## **Presumption in case of non-receipt of required information within the prescribed limit.**

If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving-

- (a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under subsection (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section.
- (b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed.

## Acceptance of Fee

According to the Right to Information (Regulation of Fee and Cost) Rules, 2005 as amended by the Right to Information (Regulation of Fee and Cost) Rules, 2006, an applicant can make payment of fee in cash or by demand draft or banker's cheque or Indian Postal Order payable to the Accounts Officer of the public authority. The public authority should ensure that payment by any of the above modes is not denied or the applicant is not compelled to draw IPO etc. in the name of any officer other than the Accounts Officer. If any public authority does not have any Accounts Officer, it should designate an officer as such for the purpose of receiving fee under the RTI Act or rules made thereunder.

Where the applicant is asked to pay additional fee, the period intervening between the dispatch of the intimation about payment of fee and the payment of fee by the applicant shall be excluded for the purpose of calculating the period of reply.

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and **no such fee shall be charged from the persons who are of below poverty line** as may be determined by the appropriate Government.

Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided **the information free of charge where a public authority fails to comply within the time limits specified in sub-section (1).**

Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

Where a request has been rejected under sub-section (1) the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,-

- (i) the reasons for such rejection;
- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the appellate authority.

A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. It is important to note that only such information can be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. The Public Information Officer is not supposed to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.

Some information seekers request the Public Information Officers to cull out information from some document(s) and give such extracted information to them. A citizen has a right to get 'material' from a public authority which is held by or under the control of that public authority. The Act, however, does not require the Public Information Officer to deduce some conclusion from the 'material' and supply the 'conclusion' so deduced to the applicant. It means that the Public Information Officer is required to supply the 'material' in the form as held by the public authority, but not to do research on behalf of the citizen to deduce anything from the material and then supply it to him.

## Supply of Information to Associations

The Act gives the right to information only to the citizens of India. It does not make provision for giving information to Corporations, Associations, Companies, etc. which are legal entities/ persons, but not citizens. However, if an application is made by an employee or office-bearer of any Corporation, Association,

Company, NGO, etc. indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation, etc.

## Section 8

### Exemption from Disclosure of Information

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over;

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information;

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened **twenty years** before the date on which any request is made under section 6 shall be provided to any person making a request under that section;

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

## **Section 9**

### **Ground for Rejection to Access in Certain Cases**

Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

## **Section 10**

### **Severability**

Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing-

- (a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
- (b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;
- (c) the name and designation of the person giving the decision;
- (d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

## Section 11

### Third Party Information

Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information;

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from

the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

Third party has been defined in Sec. 2(n) of the Act.

## **Section 12,13 and 14**

### **The Central Information Commission :**

Constitution of Central Information Commission, Term of Office and Conditions of Service and Removal of Chief Information Commissioner or Information Commissioner

## **Section 15, 16 and 17**

### **The State Information Commission :**

Constitution of State Information Commission, Term of Office and Conditions of Service and Removal of State Chief Information Commissioner or State Information Commissioner

## **Section 18**

Powers and functions of the Information Commissions, appeal and penalties (sec. 18, 19 and 20 of the Act)

The Act provides for receiving and enquiring into complaints. This has no effect on the provisions relating to appeal.

Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person-

- (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in subsection (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;
- (b) who has been refused access to any information requested under this Act;
- (c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;
- (d) who has been required to pay an amount of fee which he or she considers unreasonable;
- (e) who believes that he or she has been given incomplete, misleading or false information under this Act; and
- (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

This right is besides right of appeal to the first appellate authority.

## **Appeal**

Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, within thirty days from the expiry of such period or from the receipt of such a decision, prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be in each public authority;

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

**A second appeal** against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission;

Provided that the Central Information Commission or the State Information Commission, as the case may be may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard, to that third party.

In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to:

- (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including :-
  - (i) by providing access to information, if so requested, in a particular form;
  - (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
  - (iii) by publishing certain information or categories of information;
  - (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
  - (v) by enhancing the provision of training on the right to information for its officials;
  - (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act;
- (d) reject the application.

The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

To summarise it in tabular form, it is as under :-

<b><i>First Appeal When Appeal Can be Preferred</i></b>	<b><i>To Whom</i></b>	<b><i>Time Limit</i></b>
(a) In case non-receipt of decision / information in time, or	First appellate or authority (named by Public Authority next Senior Officer in rank to the C.I.P.O, S.P.I.O.)	Within 30 days from the expiry of such period or from the receipt of information
(b) Aggrieved by a decision of C.P.I.O, S.P.I.O. as the case may be		
Appeal may beyond 30 days be admitted if there is sufficient cause.		
<b><i>Second Appeal</i></b>		
Against the decision of the first appellate authority	Central or State Information Commission	Within 90 days from the date on which the decision should have been made or was actually received.

Second Appeal may be admitted beyond 90 days period in case of sufficient cause.

*There is no time limit fixed for disposal of second appeal at the level of Information Commission. It calls for review by Government.*

## Section 20

### Penalties

Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees;

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him;

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section

7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

Accordingly, the Central/State Information Commission is empowered to impose penalty on CPIO/SPIO, of Rs. 250/- each day. However, the total amount of such penalty shall not exceed Rs. 25000/-. There is provision of disciplinary action also against CPIO/SPIO.

## **Section 22**

### **Act to have overriding effect**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

## **Section 23**

### **Bar of Jurisdiction of Courts**

Bar of jurisdiction of courts states that “no court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of appeal under this Act.”

## **Section 24**

### **Act not to apply to certain organisations**

*The Right To Information Act 2005 is not applicable in intelligence and security organisations specified in second schedule established by the Central Government or any\ information by such organisation to that Government namely :-*

1. Intelligence Bureau,
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Special Service Bureau
16. Special Branch (CID), Andaman and Nicobar.
17. The Crime Branch-C.I.D.-CB, Dadra and Nagar Haveli.
18. Special Branch, Lakshadweep Police

However, there is no exclusion of information in respect of information pertaining to the allegations of corruption and human rights violations. However, in case of information about violation of human rights, information shall be provided after the approval of the Central/State Information Commission within 45 days from the date of request.

## Section 25

### Monitoring and Reporting

The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the Appropriate Government.

## Section 26

### Preparation of Programmes by Appropriate Government

The appropriate Government may, to the extent of availability of financial resources,-

- (a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;
- (b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;
- (c) promote timely and effective dissemination of accurate information by public authorities about their activities; and
- (d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include-

- (a) the objects of this Act;
- (b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (1) of section 5;
- (c) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case maybe;
- (d) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;
- (e) the assistance available from the Central Information Commission or State Information Commission, as the case may be;
- (f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;
- (g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;
- (h) the notices regarding fees to be paid in relation to requests for access to an information; and
- (i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

Basically this section provides for

- (a) Development of educational programme,
- (b) Promotion of effective dissemination of accurate information,
- (c) Training of CPIO/SPIO,
- (d) Issue of guidelines in its official language,
- (e) Updating and publishing of guidelines at regular intervals.

## Section 27 and 28

### Rules

The Appropriate Government competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Thus, the Act has given Right of Information to citizens with the right of first and second appeal, subject to certain exemptions.

The Act has imposed obligations on the Public Authorities to provide information.

Moreover, there are provisions for *suo-moto* information, monitoring and reporting preparations of programmes, etc.

Besides, there are provisions of enquiry into complaints and penalty which includes fine and disciplinary action as well.

The success of the Act depends on awareness, proper utilisation and implementation on the part of Public Authorities and the Appropriate Government as well.

# Decisions

**IN** two similar complaints relating to the disclosure of the accounts and funding of Political Parties the CIC through a common order, decided that :

In view of the above discussion, we hold that INC, BJP, CPI(M), CPI, NCP and BSP have been substantially financed by the Central Government under section 2(h)(ii) of the RTI Act. The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h). The constitutional and legal provisions discussed herein above also point towards their character as public authorities. The order of the Single Bench of this Commission in Complaint No.CIC/MISC/2009/0001 and CIC/MISC/2009/0002 is hereby set aside and it is held that AICC/INC, BJP, CPI(M), CPI, NCP and BSP are public authorities under section 2(h) of the RTI Act.

The Presidents, General/Secretaries of these Political Parties are hereby directed to designate CPIOs and the Appellate Authorities at their headquarters in six weeks' time. The CPIOs so appointed will respond to the RTI applications extracted in this order in four weeks time. Besides, the Presidents/General Secretaries of the above mentioned Political Parties are also directed to comply with the provisions of section 4(1) (b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause.

The complaints are disposed off as per the above directions.

- In another appeal the Appellant had requested for the copies of his annual performance appraisal reports for the years 2008, 2009 and 2010. The CPIO had informed him that in view of the fact that the NTRO (National Technical Research Organization) was included in the second schedule to the Right to Information

(RTI) Act, it was not obliged to provide the copies of these reports. The Appellant had preferred an appeal against this decision. However, the Appellate Authority had endorsed the stand taken by the CPIO and disposed off the appeal.

“We have carefully considered” said the CIC, “the facts of the case and the submissions made before us. It is a fact that the NTRO is included in the second schedule to the Right to Information (RTI) Act and, therefore, is not ordinarily obliged to disclose any information. It is also a fact that the Appellant, a former employee of this organisation, has since been terminated from service for whatever reason. Termination from service has created survival problems for him. In this background, his need to have access to his own performance appraisal reports becomes very important and relevant, as it would give him an idea of how the authorities rated his performance and whether he would have any opportunity of ever getting employment in any similar institution in future. In some sense, the denial of this information to him may result in the violation of his human rights, that is, the right to live and survive.

In the light of the above, we are inclined to allow the disclosure of the desired information in terms of the proviso to Section 24 (1) of the RTI Act. Therefore, we direct the CPIO to provide to the Appellant within 10 working days of receiving this order the copies of his annual performance appraisal reports for the three years mentioned by him in his RTI application.

The appeal is disposed off accordingly.”

- This case arose out of an RTI application dated 07.03.2011 filed by the Applicant seeking information in the form of an authenticated document with final status of a particular railway reservation ticket for 2 passengers with date of journey as 26.3.06 and PNR no. 6156349251 from the Chief Commercial Manager, Eastern Railway against a payment of IPO of Rs 20 (including photocopying/stationery charges ). The PIO responded by a letter dated 21.03.2011 stating that the subject of his letter is under control of Kolkata PRS. However, he was also informed that the passenger journey details can be obtained from office upon deposit of

verification fee of Rs. 750/- per PNR as per Railway Board's instruction in the form of a Bank Demand Draft in favour of 'FA & CAO/Eastern Railway/Kolkata'.

"The Commission after careful consideration of the aforesaid decisions holds that the statutory rules prescribed by any Public Authority do not get overridden by the provisions of the RTI Act and accordingly dismisses the instant Appeal while upholding the CPIO and AA's decision. The Appellant is advised to pay the charges laid down for verification of details of PNR and obtain the information which may be provided by the PIO within two weeks of receiving the additional fees from the Appellant.

The Appeal is disposed off on the above terms." said the CIC

- Vide his RTI Application dated 26.07.2008, an Applicant sought the following information:
  - (a) The letter dated 14.08.1955 from the His Highness, Nawab Hamidullah Khan of Bhopal to the then Hon'ble Minister of Home Affairs, Government of India, New Delhi, Mr. G.B.Pant, along with its enclosures.
  - (b) The letter dated 15 June 1956 from His Highness, Nawab Hamidullah Khan of Bhopal to the then Hon'ble Minister of Home Affairs, Government of India along with its enclosures e.g deed of gift of "Riaz Manzil" together with its compound, out houses, furniture and other fittings by H.H Nawab of Bhopal to his wife Her Highness Aftab Jahan Begum.
  - (c) Office copy of the letter No.431/56 HN dated 6/8th January from Shri A.D Dande, I.A.S, Secretary to the Home Minister, to the Private Secretary, H.H Nawab of Bhopal acknowledging receipt by "Pantji" of "His Highness Aftab Jahan Begum together with its enclosure..."
  - (d) Copy of the letter dated 30th April 1949 from Mr. V.P Menon, Advisor to G.O.I, Ministry of States, G.O.I, New Delhi to H.H. Nawab of Bhopal.

- (e) Copy of Agreement dated 30th April 1949 executed between H.H. Nawab of Bhopal and Advisor/G.O.I, New Delhi.
- (f) List of Properties recognized as H.H Nawab of Bhopal's personal properties that constituted Annexure to the Agreement dated 30th April 1949 and referred to in article V(2) of the said Agreement

The CIC decided that :

“Regarding the submission of the Respondents that requisite information pertains to very old records which can be traced only when there is a proper reference number/file number etc. we are of the opinion that the National Archives of India is the custodian of Records which is older than 30 years, under Public Records Act, 1998 but the records are held by the Ministry of Home Affairs. The Ministry of Home Affairs will procure the documents from the National Archives by giving them the proper reference number to identify the documents numbered by them, if they do not have the custody of documents at present, and supply the same to the Applicant. In case, the efforts to trace the records and documents bear no fruit, the Ministry of Home Affairs will file an affidavit for the perusal of the Commission regarding the efforts made along with the instructions issued to trace the records.

Appeal is allowed.”

- Another Appellant filed an RTI application dated 14/12/2009 with the Respondent seeking the following information:
  1. Please provide me all the information and certified copies that how many number of rescue operations for children have been done by your relevant department, Government of NCT of Delhi under The Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice (Care and Protection of Children) Act 2000 as well as Bonded Labour System (Abolition) Act 1976, from 1st January 2008 to till date? Please provide a comprehensive list of each and every rescue operation indicating place, date, time and any other relevant information attached with it?

2. Please provide me the complete list and certified copies of how many Government officials with their designation were present along with any NGO, people's representatives, etc during the rescue operations? Please provide a comprehensive list of officials with each and every rescue operation stated in Question no.1?
3. Please provide a comprehensive list of all the children rescued under each and every rescue operation stated in Question no.1?
4. Please provide a comprehensive list and certified copies and the affidavit/identification relied upon of all the guardians/parents who have been handed the security of all the rescued children?
5. Please provide me the monitoring details and certified copies of each and every rescued child stated in Question no.1 and as submitted to any Hon'ble court, competent authority or any lawful authority?
6. Please provide me the details and certified copies of how many F.I.Rs were registered against the employers, placement agencies, etc under The Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice (Care and Protection of Children) Act 2000 as well as Bonded Labour System (Abolition) Act 1976, from 1st January 2008 to till date as per details as stated in Question no.1?
7. Please provide me the comprehensive details of the amount recovered from the Employers, Placement agencies, etc in all the rescue operations stated in Question no.1?
8. If there is no or partial recovery of the penalty from the employer in the rescue operations, please fix the responsibility and name of the Government official who is responsible for not following the directions of the Hon'ble Supreme Court?
9. Please provide me the receipt/ details of the grant/ amount deposited by the government of NCT of Delhi for the welfare of each and every rescued child as per stated in Question no.1?

10. List of all the adult unemployed members of the family of the child labourers who have been provided employment in his place as per stated in question no.1
11. List of the entire rescued children who have been directed to receive education as stated in question no. 1?
12. If the information related to questions no. 1 to 11 is incomplete or there is no data, please name and fix the responsibility of the official?
13. If the matter relates to sec 8 and 9 of RTI Act 2005, and the department declines to provide the information or partially gives the information for the above mentioned queries, please provide the justification for the same as per the ruling of Hon'ble Delhi High Court WP (C) No. 3114/2007 in Bhagat Singh Vs Chief Information Commissioner.

The CIC allowed the appeal and gave the following decision.

**“The SPIO is directed to provide the following information to the Appellant **before 26 September 2011****

1. List of affidavits/identification along with certified copies relied upon, of all the guardians/ parents who have been handed the security of all the children rescued from bonded labour;
2. Monitoring details along with certified copies of every child rescued from bonded labour and as submitted to any Hon'ble court, competent authority or lawful authority; and
3. List of children rescued from bonded labour who are required to receive education.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.”

- In the RTI application dated 2.12.2011 by complainant Subhash Chandra Agrawal which sought the following information:-

1. Is it true that Union Ministry for Minority Affairs sought opinion of Honourable Attorney General of India on aspect of providing copies of entire communications between Prime Minister Dr. Manmohan Singh and the Ministry ever since the UPA government came into power in the year 2009 (as also referred in enclosed news clipping) ?
2. If yes, please provide copies of complete communication/s etc. received from Union Ministry of Minority Affairs and/ or others etc on seeking such opinion of Honourable Attorney General of India as referred in query (1) above.
3. Copy of the opinion given by Honourable Attorney General Shri GE Vahanvati on the matter as referred in query(1) above.
4. Is it true that rules prohibit law officers of Union government providing opinions to any ministry/department of Government of India or any other statutory organization or any other public sector undertaking unless the proposal or a reference in this regard is received through the Ministry of Law & Justice, Department of Legal Affairs. Complainant Aggarwal has also contended that the A.G. functions under the Ministry of Law and Justice and is, therefore, a public authority. We cannot accept this argument as there is a lawyer-client relationship between the AG and the Government of India and not that of servant and master and, therefore, this argument should be rejected.

The CIC dismissed the complaint stating

“In view of the above discussion, we hold that the office of Attorney General is *sui generis*. He is a stand alone counsel of the Government of India. He renders legal advice to the Government of India which is not binding in nature. He is not a public authority u/s 2 (h) of the RTI Act. Therefore, the complaints referred to hereinabove have no merit and are dismissed.”

- On a writ petition along with the connected writ petitions (relied by West Bengal Board of Secondary Education and others)

on right of an examinee to inspection answer books, a Division Bench of the High Court heard and disposed off by a common judgment dated 5.2.2009. The High Court held that the evaluated answer-books of an examinee writing a public examination conducted by statutory bodies like CBSE or any University or Board of Secondary Education, being a ‘document, manuscript, record, and opinion’ fell within the definition of “information” as defined in section 2(f) of the RTI Act. It held that the provisions of the RTI Act should be interpreted in a manner which would lead towards dissemination of information rather than withholding the same; and in view of the right to information, the examining bodies were bound to provide inspection of evaluated answer books to the examinees. Consequently, it directed CBSE to grant inspection of the answer books to the examinees who sought information. The High Court, however, rejected the prayer made by the examinees for re-evaluation of the answer-books, as that was not a relief that was available under RTI Act. RTI Act only provided a right to access information, but not for any consequential reliefs. Feeling aggrieved by the direction to grant inspection, CBSE has filed this appeal by special leave. (para 5)

On the contentions urged, the following questions arise for our consideration

- (i) Whether an examinee’s right to information under the RTI Act includes a right to inspect his evaluated answer books in a public examination or taking certified copies thereof?
- (ii) Whether the decisions of this court in Maharashtra State Board of Secondary Education [1984 (4) SCC 27] and other cases referred to above, in any way affect or interfere with the right of an examinee seeking inspection of his answer books or seeking certified copies thereof?
- (iii) Whether an examining body holds the evaluated answer books “in a fiduciary relationship” and

consequently has no obligation to give inspection of the evaluated answer books under section 8 (1) (e) of RTI Act?

(iv) If the examinee is entitled to inspection of the evaluated answer books or seek certified copies thereof, whether such right is subject to any limitations, conditions or safeguards? (para 81)

## Decision

(i) Every examinee will have the right to access his evaluated answer-books, by either inspecting them or take certified copies thereof, unless the evaluated answer-books are found to be exempted under section 8(1)(e) of the RTI Act.

(ii) The decision of the Court in Maharashtra State Board (supra) and the subsequent decisions following the same, will not affect or interfere with the right of the examinee seeking inspection of answer-books or taking certified copies thereof.

(iii) Examining body does not hold the evaluated answer-books in a fiduciary relationship. Not being information available to an examining body in its fiduciary relationship, the exemption under section 8 (1) (e) is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees. (para 27)

(iv) The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring

to light the necessary information under clause (b) of section 4 (1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information, (that is; information other than those enumerated in section 4 (1) (b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments, etc.). Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75 per cent of the staff of public authorities spends 75 per cent of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of public authorities prioritising 'information furnishing', at the cost of their normal and regular duties.

## Conclusion

In view of the foregoing, the order of the High Court directing the examining bodies to permit examinees to have inspection of

their answer books is affirmed, subject to the clarifications regarding the scope of the RTI Act and the safeguards and conditions subject to which ‘information’ should be furnished. The appeals are disposed of accordingly.

- A writ petition, in which Delhi Development Authority was the petitioner and the CLC the respondent, a number of questions were raised:-

- (1) Whether the Central Information Commission has the power, under the RTI Act and the Rules made thereunder to appoint a committee of persons other than the members of the Commission, to inquire into the implementation of the obligations cast upon a public authority, such as the DDA by virtue of Section 4 of the RTI Act ?
- (2) Whether the Chief Information Commissioner had the power to make the Central Information Commission (Management) Regulations, 2007 under Section 12(4) of the RTI Act and particularly regulations with regard to the subject matter of Chapter IV thereof, namely, ‘registration, abatement or return of the appeal’ ?
- (3) Whether the Central Information Commission had the power to issue a direction requiring the presence of the Vice-Chairman, DDA in the proceedings before it?

The answers to these questions are:- (1) No; (2) No; and (3) No. The reasons for the same are given below:-

Question 1. The Central Information Commission did not have the power to appoint the committee that it did by virtue of its order dated 22.09.2009 and, therefore, to this extent, the impugned order is liable to be set aside and it is so set aside. (para 21)

Question 2. The regulations have been framed by the Chief Information Commissioner in complete derogation of the provisions of the RTI Act. He had no power to frame the regulations,

particularly those contained in Chapter IV. Consequently, this question is also answered in the negative.

Question 3. The Chief Information Commission does not fall within the definition of “appropriate Government” or the “competent authority”. In other words, the Chief Information Commissioner has no power to make rules under Section 27 or Section 28.

There is no doubt that while the Central Information Commission is conducting an inquiry into a matter under Section 18 of the said Act, it has the powers to summon and enforce the attendance of persons and compel them to give written or oral evidence on oath and to produce the documents or things. But, it is only for the purposes of giving evidence and to produce documents or things that a person may be summoned by the Central Information Commission. This power of summoning for the purposes of evidence cannot be read as a general power to call any person for any purpose in the course of hearing before the Central Information Commission. In the present case, the Vice-Chairman, DDA was not summoned for either giving oral evidence or written evidence or to produce any documents or things in his possession. He was directed to be present for other reasons. That power is not there with the Central Information Commission. Such a power only exists in courts of plenary jurisdiction. The Central Information Commission is not a court and certainly not a body

## **Reliefs:**

In view of the answers to the questions formulated above, the impugned order dated 22.09.2009 was set aside to the extent the Central Information Commission appointed an ‘enquiry committee’ when it was incumbent upon the Commission to conduct the inquiry itself. It is also set aside to the extent that it draws an adverse inference with regard to the absence of the Vice-Chairman, DDA in one of its sittings. The impugned Regulations are quashed as being *ultra vires* the Right to Information Act, 2005. The parties are left to bear their respective costs” stated the High Court Judgement .

- A civil appeal in the Supreme Court on the Institute of Chartered Accountants raised several questions:
  - (i) Whether the instructions and solutions to questions (if any) given by ICAI to examiners and moderators, are intellectual property of the ICAI, disclosure of which would harm the competitive position of third parties and therefore exempted under section 8(1) (d) of the RTI Act?
  - (ii) Whether providing access to the information sought (instructions and solutions to questions issued by ICAI to examiners and moderators) would involve an infringement of the copyright and therefore the request for information is liable to be rejected under section 9 of the RTI Act?
  - (iii) Whether the instructions and solutions to questions are information made available to examiners and moderators in their fiduciary capacity and therefore exempted under section 8(1)(e) of the RTI Act?
  - (iv) Whether the High Court was justified in directing the appellant to furnish to the first respondent five items of information sought (in query No. 13) relating to Regulation 39(2) of Chartered Accountants Regulations, 1988? (para 9)

The Supreme Court gave the following decisions on the appeal

- (i) Information can be sought under the RTI Act at different stages or different points of time. What is exempted from disclosure at one point of time may cease to be exempted at a later point of time, depending upon the nature of exemption.

Therefore, section 8(1)(d) of the RTI Act does not bar or prohibit the disclosure of question papers, model answers (solutions to questions) and instructions if any, given to the examiners and moderators after

the examination and after the evaluation of answer scripts is completed, as at that stage they will not harm the competitive position of any third party. We, therefore, reject the contention of the appellant that if an information is exempt at any given point of time, it continues to be exempt for all time to come. (para 12)

- (ii) The reason for using the word 'State' and not 'public authority' in section 9 of RTI Act is apparently because the definition of 'public authority' in the Act is wider than the definition of 'State' in Article 12 and includes even non-government organizations financed directly or indirectly by funds provided by the appropriate government. Be that as it may an application for information would be rejected under section 9 of RTI Act, only if information sought involves an infringement of copyright subsisting in a person other than the State. ICAI being a statutory body created by the Chartered Accountants Act, 1948 is 'State'. The information sought is a material in which ICAI claims a copyright. It is not the case of ICAI that anyone else has a copyright in such material. In fact, it has specifically pleaded that even if the question papers, solutions/ model answers, or other instructions are prepared by any third party for ICAI, the copyright therein is assigned in favour of ICAI. Providing access to information in respect of which ICAI holds a copyright does not involve infringement of a copyright subsisting in a person other than the State. Therefore, ICAI is not entitled to claim protection against disclosure under section 9 of the RTI Act.
- (iii) In this case the Chief Information Commissioner rightly held that the information sought under queries (3) and (5) were exempted under section 8(1)(e) and that there was no larger public interest requiring denial of the statutory exemption regarding such information.

The High Court fell into an error in holding that the information sought under queries (3) and (5) was not exempted.

(iv) As the examining bodies have not been exempted, and as the examination processes of examining bodies have not been exempted, the examining bodies will have to gear themselves to comply with the provisions of the RTI Act. We, however, agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under section 4(1) (b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities under a government, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources.

In view of the above, this appeal is allowed in part and the order of the High Court is set aside and the order of the CIC is restored, subject to one modification in regard to query (13) : *ICAI to disclose to the first respondent, the standard criteria, if any, relating to moderation, employed by it, for the purpose of making revisions under Regulation 39(2).*

- This special leave petition was filed against the judgment and order dated 24.4.2009 passed in Writ Petition No. 28810 of 2008 by the High Court of Andhra Pradesh by which the writ petition against the order of dismissal of the petitioner's application and successive appeals under the Right to Information Act, 2005 (hereinafter called the "RTI Act") was dismissed. In the said petition, the direction was sought by the Petitioner to the Respondent No. 1 to provide information as asked by him vide his application dated

15.11.2006 from the Respondent No. 4 - a Judicial Officer as for what reasons, the Respondent No. 4 had decided his Miscellaneous Appeal dishonestly. (para 1)

The Supreme Court had upheld the decision of the High Court stating that under the RTI Act “information” is defined under Section 2(t) which provides:

*“information “means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”*

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed, especially in matters pertaining to judicial decisions. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion. (para 6)

Moreover, in the instant case, the petitioner submitted his application under Section 6 of the RTI Act before the Administrative Officer-cum-Assistant State Public Information Officer seeking information in respect of the questions raised in his application. However, the Public Information Officer is not supposed to have any material which is not before him; or any information he could

have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him. A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is *per se* illegal and unwarranted. A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions. (para 7)

As the petitioner has misused the provisions of the RTI Act, the High Court had rightly dismissed the writ petition. (para 8)

In view of the above, the Special Leave Petition is accordingly dismissed. (para 9)

- In another case, the respondent Subhash Chandra Agrawal requested the CPIO, Supreme Court of India to arrange to send him a copy of “complete file(s) (only as available in the Supreme Court) inclusive of copies of complete correspondence exchanged between the constitutional authorities concerned with file notings relating to said appointment of Mr Justice H. L. Dattu, Mr Justice A. K. Ganguly and Mr Justice R. M. Lodha superseding seniority of Mr Justice P. Shah, Mr Justice A. K. Patnaik and Mr Justice V. K. Gupta as allegedly objected to by the Prime Minister’s Office (PMO) also” He further requested the CPIO not to invoke Section 6(3) of the Right to Information Act. 2005 (for short “the Act”). (para 2). The CPIO, Supreme Court decided as follows:

“The current debate is a sign of a healthy nation. This debate on the Constitution involves great and fundamental issues. Most of the time we reel under the pressure of precedents. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time? (para 13)

Following substantial questions of law as to the interpretation of the Constitution arise for consideration:

- (a) Whether the concept of independence of the judiciary requires and demands the prohibition of furnishing of the information sought? Whether the information sought amounts to interference in the functioning of the judiciary?
- (b) Whether the information sought for cannot be furnished to avoid any erosion in the credibility of the decisions and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision?
- (c) Whether the information sought for is exempt under Section 8(1)(j) of the Right to Information Act? (para 14)

The above questions involve the interpretation of the Constitution and raise great and fundamental issues. (para 15)

For the aforesaid reasons, we direct the Registry to place this matter before the Hon’ble Chief Justice of India for constitution of a Bench of appropriate strength. Let the papers be accordingly placed before the Hon’ble Chief Justice of India. (para 16)”

- In a case between Bihar Public Service Commission Vs Saiyed Hussain Abbas, the following decisions were given:

**Public Authority.** Commission, A Public Authority. The 'public authority' is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories under Section 2(h) of the Act. In terms of Section 2(h)(a), a body or an institution which is established or constituted by or under the Constitution would be a public authority. Since Public Service Commission is established under Article 315 of the Constitution of India and as such there cannot be any escape from the conclusion that the Commission shall be a public authority within the scope of this section.[Bihar Public Service Commission V Saiyed Hussain Abbas Rizwi and Anr (2012)13 SCC 61.

**Application of mind.** Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act and secondly the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, nonapplicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case.[Bihar Public Service Commission Vs Saiyed Hussain Abbas Rizwi and Anr(2012) 13 SCC 61.

The ancillary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. First, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information

available with the examining body in confidence with the interviewers. Declaration of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. There is no error of jurisdiction or reasoning in this regard. But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act. [Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi and Anr.(2012) 13 SCC 61]

- In a case between CIC and State of Manipur, the decision was: Right to information ..... A way to preserve the democracy. The Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. And keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption and making the Government and its instrumentalities accountable. The Act is meant to harmonise the conflicting interests of Government to preserve the confidentiality of sensitive information with the right of citizens to know the functioning of the governmental process in such a way as to preserve the paramountcy of the democratic ideal.(Central Information Commission V state of Manipur and Ors).
- In a case relating to whether Right to Information has Over-riding effect on Section 13 and 14 of SARFAESI Act. Whether or not secured creditor, which had initiated action for enforcement of its security interest in terms of provisions of SARFAESI Act was entitled to publish photograph(s) of defaulting borrower(s)/ guarantor(s) in newspapers/magazines etc. The decision was that publication of photograph of borrower was neither allowed by express provision nor by necessary implication - Public might be notified in terms of statutory rules by issuance of notices in newspapers/magazines etc. giving details of borrower, loan account, location of secured asset, its measurement, quantum of secured debt, etc. but there was no provision in SARFAESI Act or rules authorizing secured creditor to publish photographs of defaulting borrowers - If SARFAESI Act barred publishing of photograph of

defaulting borrower, it could not be published by aid of RTI Act - Public authority had no power to act in particular manner unless it was authorized by law - Law was well settled that, State or its executive officers could not interfere with rights of its subjects unless they could point to some specific rule of law authorizing act of interference - There was absolute lack of legislative sanction in relation to publication of photographs of defaulting borrower(s)/ guarantor(s) - SARFAESI Act and rules not having conferred any power on secured creditors to publish their photographs, they could not resort to such action on ground that publication of photograph was not prohibited - Prohibition had to be inferred in absence of express authorization - Publication of photograph of defaulting borrower/guarantor had potential of exposing him to irreparable loss, injury and prejudice, publication of photograph could not be resorted to in absence of an express power or an agreed term in this behalf. [(Ujjal Kumar Das & Anr Vs. State Bank of India & Ors. AND Messrs Allianz Convergence Private Limited & Ors. Vs. The General Manager, State Bank of India & Anr. ( High Court of Calcutta W.P. 10315 and 9850 (W) of 2013)].

- **Obligations Of Public Authorities.** Central Information Commission is not a court and certainly not a body which exercises plenary jurisdiction under RTI Act. The flow of information is not to be an unregulated flood. It needs to be controlled just as the flow of water is controlled by a tap. Those empowered to handle this 'tap' of information are imbued with great power. Under the RTI Act, this power is to be exercised by the Information Commissions (State and Central). But, the power is clearly not plenary, unrestricted, limitless or unguided. The Information Commissions are set up under the said Act and they have to perform their functions and duties within the precincts marked out by the legislature. Central Information Commission is a creature of statute and its powers and functions were circumscribed by statute itself. It cannot summon persons to give oral evidence or written evidence or to produce any documents or things in its possession. However, it can direct a person to remain present for other reasons. (Delhi Development Authority

Vs. Central Information Commission and Anr. High court of Delhi.W.P (C) 12714/2009).

- Notice to third party... An essential Requirement of section 11. Section 11 of the Act provides that where the State Public Information Officer or the Central Public Information Officer intends to disclose any information or record which relates to a third party and has been treated as confidential by the third party, a written notice would have to be issued to the third party. Similarly, Section 19(4) of the Act provides that if a decision of the Central or the State Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, a reasonable opportunity of being heard has to be afforded to that third party. Before directing disclosure of information to applicant in a case of third party information, State Information Commission has to issue notice to the concerned third party and hear him on his objection. Proceedings before Public Information Officer and before State Information Commission had to be concluded in manner consistent with principles of natural justice.[ Sangam Transport Vs. State Information Commission. High Court of Allahabad Civil Misc. Writ Petition Nos. 45657 and 38933 of 2014].
- Section 15(6), A Sine Qua Non for appointment. If any disqualified person is chosen and appointed as commissioner then he shall relinquish his position immediately after appointment if he uses to hold such office of profit. Because the requirement is sine qua non before assumption of charge as independent functioning being one of basic object of legislature and is to be followed in letter and spirit. Articles 14 and 16 of the Constitution of India also asserts the same fact. Also, there cannot be any conflict of interest in the appointment of candidates as commissioners.. Any independent discharge of their duties being a test of their suitability post appointment and no instance of deviant conduct is acceptable, having been alleged in regard to discharge of their statutory duties. (K. Padmanabhaiah and others Vs. Government of Andhra Pradesh, GAD, and others. High Court of Andhra Pradesh, P.I.L. Nos. 28 and 38 of 2013).

# Case Studies & Experiences

## CASE STUDY – I

**IN A** case before the State Information Commission, Bihar between B.M.D. Agrawal vs PIO, Saran, Chapra, Bihar in May 2007, the Applicant asked the following questions from District Magistrate and Collector, Saran, Chapra.

- Who is the owner of the plot of land where the police post in Mohalla Daulat Ganj Police Station, Bhagwan Bajar Chapra is situated?
- Whether any part of the above land has been transferred to Government of Bihar for setting up the police post?
- If so, date of the transfer deed or land acquisition?
- If not, whether the area of the plot of land under occupation/possession of the police post is unauthorized?
- If the occupation/possession is unauthorized, who is the competent authority to request for removing the police post as well as for handing over the vacant possession of the land to the rightful owner of the land peacefully?

In June 2007 a reminder was sent to the District Magistrate and Collector, Saran, Chapra. The Chief Information Commission, Delhi was requested to look into the matter which was forwarded to the State Information Commission, Patna, Bihar vide letter dated 5.04.2008

When no response was received the State Information Commission, Patna, Bihar was requested to intervene in the matter in February 2008.

In April 2008, the State Information Commission, Patna, Bihar directed the PIO to provide the required information by 17.04.2008. with a copy to the Commission. The State Information Commission further asked to explain under section 20(1) as to why Rs. 250 per day with effect from 1.04.2008 should not be imposed on the PIO. In July 2008 the Commission recorded the statement of the letter dated 3rd July 2008 sent by “Anchal Adhikari, Sadar, Chapra”. The police station is situated on the said land from the British period. It is in the name of Raghunandan Das Agrawal. As per local inquiry, the temple by the side of the police station is also in his name and the land was gifted to the temple but it is difficult to say as to when and how the police station was constructed. The executive officer, Municipal Board, Saran, Chapra has been requested to send his opinion. The Commission directed the Anchal Adhikari, Sadar to provide the information received from the Executive Officer, Municipal Board, Saran, Chapra to the applicant. The Commission also closed the dispute.

When the Commission was informed by the applicant that the PIO had not provided the information even by March 2009. the Commission repeated the direction dated 8.07.2008 in February 2010.

The Executive Officer, Municipal Board, Saran, Chapra has not provided information and the Government of Bihar is still in unauthorized possession of the said plot of land and has not vacated the same in spite of many requests.

## **Case Study-II**

In the case before State Information Commissioner, Lucknow, U.P. between Anand Mohan -Complainant vs. CPIO, Varanasi Development Authority, (VDA), the complainant submitted application under the RTI Act, 2005 to the CPIO, Varanasi Development Authority, seeking certain information. But the CPIO did not provide the information. Finally, the complainant appealed to State Information Commissioner, Lucknow, U.P.

The case was fixed for hearing on April 20<sup>th</sup> 2011. The complainant appeared but no one appeared on behalf of Varanasi Development Authority. It was noticed that no notice to VDA was issued. It was decided to issue another notice to VDA. During the next hearing in 25.05.2011, the complainant was present but no one was present on behalf of VDA. The complainant informed that he had not received the information from the VDA. After considering all facts, the State Information Commissioner, passed an order imposing fine @ Rs. 250 per day up to Rs. 25,000/-. In case VDA did not provide the required information and submit reply, the District Collector should be requested to ensure recovery of the fine and to deposit the same in the Government treasury. The complainant was present at the next hearing on August 2011. One junior engineer was present on behalf of VDA who informed that the required information had been provided to the complainant which was contested by the complainant. On the request of the junior engineer of VDA, another date was fixed to provide all required information after due certification. Again, in November 2011, the complainant was present but the CPIO of VDA was not present. Another engineer of VDA was present. The complainant informed that full information had not been provided to him. The State Information Commissioner directed to recover the amount of fine, in two installments from the salary of the CPIO and to deposit the same in the Government treasury, to explain as to why all required information had not been provided to the complainant and why action should not be taken against CPIO by his employer (VDA) as per section 20 (2) of the Act.

Next date was fixed on 8.02.2012 when the complainant informed that he had received full information subsequently.

### **Case Study-III**

In this case between B.M.D. Agrawal V/S P.I.O, National Commission for Women, New Delhi in February 2009 the Applicant requested for following information:-

- (a) Whether Mrs. Babita has been traced and handed over to her husband, Mr. Ramesh Jha, if so, when?
- (b) If not, whether the Commission has received any information from the Police District, Ghaziabad (UP)?
- (c) What is the present status of the complaint under reference?
- (d) Whether the complaint has been closed by the Commission or is still pending for taking appropriate action for recovery of Mrs. Babita and action against the offenders connected with the complaint?

Reminder was sent to the PIO in April 2009 and when no information was received from the PIO by May 2009. appeal was made to the First Appellate Authority. However, when no information was received from Appellate Authority by June 2009, New Delhi was informed and requested to kindly intervene in the matter. In July 2009 the CPIO of National Commission for Women informed as under:-

- Para (1). As per the ATR dated 16.12.2009 received from IGP, Meerut, the police has not yet recovered the victim, Ms. Babita. The victim's husband's depositions have not yet been made. The report categorically states that the whereabouts of the victim's husband are not known;
- Para (2). The Commission has received ATRs from SSP, Ghaziabad (Dated: 09.08.2009), District Magistrate, Ghaziabad (Dated: 09.08.2009) and from IGP, Meerut (Dated: 16.12.2009). The copies of all above said ATRs have been enclosed herewith for facility of reference;
- Para (3)&(4). The Commission vide reminder dated 20.07.2009 (Copy enclosed) has sought status report from the IGP, Meerut (Copy also marked to SSP, Ghaziabad) within 07 days. The matter has not yet been closed at NCW.”

In February 2010 the Law Officer, National Commission for Women wrote to the applicant as under:-

- (a) The Commission is in receipt of a letter from the office of the IGP, Meerut Range. A copy of the same is enclosed for facility of reference.
- (b) The Commission has not yet received any action report from SSP, Ghaziabad. However, the NCW vide remainder had requested him to submit the ATR within 05 days.

The Information Commissioner passed following orders vide order dated 2.08.2010 on this use.

- (a) The PIO is hereby directed to provide requisite information to the complainant in three weeks' time as per the provisions of law.
- (b) Any failure on your part in complying with the order of the Commission in the above mentioned time frame would render you liable for penal action under section 20 (1) of the RTI Act, 2005.
- (c) You are also directed to send the following to the Commission by Speed Post or dasti:-
  - i). A copy of the information, if any, sent to the complainant;
  - ii). Your explanation for not supplying information to the complainant within the stipulated time under RTI Act, 2005

In August 2010 the RTI cell of National Commission for Women informed the CIC as under:-

“The copy of application received from applicant is enclosed herewith as annexure ‘A’. The information provided to Sh. B.M.D. Agrawal by Law Officer, NCW, vide letter dated 24<sup>th</sup> February, 2010 is enclosed herewith as Annexure ‘B’. The same information is being sent again to Sh. B.M.D. Agrawal for his information and

NCW tried best to help the victim through civil administration of UP Government. In this regard, letters were written by Member Secretary to District magistrate, Sr. Superintendent of Police, Ghaziabad to help the victim. The copy of these letters enclosed with Annexure 'B'. This letter does not answer the direction "Your explanation for not supplying information to the complainant within the stipulated time under RTI Act, 2005." There is no further information from NCW and /or any other Government authority.

## **Banks' Inspection Reports to Come Under RTI: CIC**

In a significant order passed by the Central Information Commission, inspection reports of banks can be disclosed under the RTI Act. And, the Reserve Bank of India cannot deny disclosing the report stating that it can have ill-effects on the economy.

The CIC's order came in a case pertaining to Kanpur based United Mercantile Cooperative Bank Ltd. In its order, the CIC stated that the Reserve Bank of India should disclose the audit report of the bank, because citizens have the right to know and not disclosing the report is "against the basic tenets of democracy and transparency".

It was in July 2011 that one of the share-holders of the said cooperative bank, Ashwini Dixit, had sought the copies of the annual audit of the bank conducted by RBI. The bank had allegedly committed a fraud and the local newspapers had widely reported the matter. "The bank has not paid me even a single penny as dividend from 1997 to 2008," said Dixit. He had filed an RTI application with both the Urban Cooperative Department and RBI. "I only wanted to know if the non-performing assets of the bank were going up every year, and what was RBI doing to curb that," said Dixit.

While the cooperative department has remained mum all along, despite seven appeals being filed in the case, RBI has provided only partial information. "I have filed complaints in the State Information Commission also, but none of them have come up for

hearing till now,” he said. Meanwhile, CIC, on March 12, had asked RBI to provide the information to the appellant.

The information was sought about scams/economic inconsistencies of United Mercantile Cooperative Bank Ltd. along with the daily progress report. RBI denied the information saying it is exempted from disclosure under section 8(1)(a) of the RTI Act. Section 8(1)(a) of the RTI Act exempts, “information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the state, relation with foreign state or lead to incitement of an offence.”

RBI was of the opinion that disclosing the observations of the report will affect other institutions also, which might have business relations with the said bank. This might also dilute public confidence in the banking system. However, CIC said that it was unable to understand how disclosing information about action taken by RBI against scams/inconsistencies of the said bank, along with the daily progress reports, will affect the economic interests of the nation or its security and sovereignty.

CIC also did not buy the argument by RBI that disclosure of inspection reports and the information submitted to RBI or collected by RBI would be detrimental to the interest of depositors, public and banking policies. And, it is not allowed under the Banking Regulation Act 1949. CIC, in accordance with section 22 of the RTI Act however, held that provisions of RTI Act will override the provisions of the Banking Regulation Act, as regards furnishing the information.

RBI said that it cannot share the information as it could “adversely affect public interest and compromise financial sector stability”. It might bring out the ‘weakness in the financial institutions, systems and management of inspected entities’. The RBI further contended that ‘disclosure can erode public confidence not only in the inspected entity but in the banking sector as well.’

To which the Commission said, “It appears that RBI is the best judge to decide what citizens should know.” It further observed,

“It follows that if RBI made mistakes, or there was corruption, citizens should suffer. This appears to go against the basic tenets of democracy and transparency.” However, RBI, instead of providing the information has now moved court in the matter, said Dixit.

*Neha Shukla/TNN  
(Times of India, 27.04.2012)*

## Nuclear Corporation told to share safety reports

In an order that can open up nuclear installations for public scrutiny, the Central Information Commission (CIC) has asked government to release the safety analysis report of Kudankulam nuclear power plant without compromising information of strategic importance.

The controversy started when the Nuclear Power Corporation of India (NPCIL) refused to provide safety analysis report and site evaluation report of reactors I and II of the Kudankulam plant to Right To Information (RTI) applicant S P Udaya Kumar, who is leading the agitation against the nuclear plant in Tamil Nadu.

Kumar, who has been accused of using foreign money to fuel the agitation, filed an appeal with the transparency watch-dog and claimed that the information was wrongly denied on the ground that it was “classified”.

The Information Commission agreed with Kumar’s contention that terming a record as “classified” has not been stipulated as an exemption under the RTI law.

NPCIL’s public information officer SK Srivastava had also claimed that information contained in the safety analysis report was of “strategic, scientific and security-related importance” and so, could not be shared.

The CIC, however, said the officer had failed to give specific reasons-as required under the RTI law-for applying these exemptions. In addition, similar information was disclosed on government websites in the US, UK and Canada and denial of

such information would amount to treating Indian citizens differently, he said and instructed NPCIL to place the information on its website.

On the larger issue of putting such information in public domain, the CIC said disclosure of the reports would provide a comprehensive perspective to citizens about holistic understanding of the Kudankulam nuclear power plant and enable them to voice their opinions on nuclear safety issues.

*Chetan Chauhan  
(Hindustan Times)*

## **Rickshawpuller Benefits from RTI**

It has been a year since the Right to Information Act became law and people are starting to see its positive impact in their lives.

Mazloom Nadaf, a 70-year old rickshaw puller in Bihar has built his own house after exercising his right to know.

But he spent a long time to get his home under the Indira Awas Yojana - the country's national housing scheme.

Five years after he applied, authorities demanded Rs 5000 to process his application.

But he refused to give in and instead fought back with the help of the Right to Information Act.

### ***NGO role***

Nadaf approached the legal aid centre of an NGO working in Madhubani district and sought their assistance in drafting and filing an RTI application.

In his application Mazloom asked for the daily progress report made on his application to avail of the Indira Awas Yojana.

He filed his application with the Circle Officer for his block who forwarded the same to the Block Development Officer (BDO).

The BDO on receiving the RTI application sent for Mazloom and treated him like a VIP and with a lot of respect handed him a

cheque of Rs. 15,000 (first installment payment) under the Indira Awas Yojna.

Mazloom's house is now under construction. He has also been assured by the BDO that all his other requests will also be taken care of.

*NDTV Correspondent  
Sunday, July 2, 2006 (Jhanjharpur, Bihar)*

## **Karnataka villagers insist on Right to Food**

People in rural Karnataka have combined campaigns for the Right to Information and the Right to Food to fight hunger.

Poor villagers have successfully participated in social audits and public hearings to demand that the rations due to them are allotted to them at the correct prices.

“They were not giving us our monthly rations. We complained, and the officials invited us for a meeting. Now we get rice at Rs 3 and wheat at Rs. 2 a kg.” says Chandramma, a member of the self help group in the Chennagiri village.

“There are nine programmes of food security, but people did not know about them. We staged street theatres and conducted public hearings to spread awareness.” says K B Roopa Naik, Channagiri Taluka, Davangere.

## **Quality and quantity**

A positive fallout of the public hearing has been the marked improvement in the quality of foodgrains which is now being supplied in the villages.

“After a week of public hearing the people got ration cards and new ration shops were opened.” says N M Muthappa, Right to Food Campaign, Karnataka.

“For the first time women were confident enough to ask why they were not being given rice and wheat at the correct price.

This movement must spread to every village and every taluka, "says Seetanima, President of the self-help group in Davangere.

It's a matter of national shame that lakhs of people go to bed hungry every night in the country. Karnataka has even had instances of the foodgrains meant for drought victims being stolen and exported to other countries.

However, it can now be hoped that the new tools of empowerment will enable the people to ask tough questions and demand answers as well as action.

*By Nupur Basu, Tuesday, April 4, 2006 (Bangalore)*

## **Pensioners get their dues**

RTI Act helps payment of interest on arrears due on account of recomputation of pension and other retirement benefits as a result of implementation of Supreme Court's Judgment dated 25-07-1997 in CA No 4174/88 of 4995 and other tagged SLPs:-

Indian Railway Pensioners Association, Bhavnagar Division of Western Railway, over the years, submitted hundreds of representations to GM, Western Railway and DRM, Bhavnagar to get the payment in the above case. 137 specific cases of non payment were filed in the pension Adalat held but nothing happened.

When on 16-03-07 a request under RTI ACT 2005 was submitted to CPIO, Western Railway for disclosing the reasons for not implementing the judgment of the Apex court, things started moving. Sh. S.R. Ghosal, Dy. General Manager, Western Railway vide his letter No. G-542/2/2007/136 dated 03-05-2007 with reference to request under RTI Act, has accepted the liability for making payment and according to the information disclosed by him, all the Divisions under Western Railway have been advised to take immediate steps for making payment.

Thanks to RTI Act, thousands of pensioners will at last get their outstanding dues.

Pensioners can also use RTI Act and get the entire working sheet regarding calculation of pension. This can be verified to point out any error in calculation of pension and gratuity.

## **Rajasthan villagers use RTI to end woes**

Residents of a village in Rajasthan's Bikaner district have joined hands to put an end to the practice of selling grains from ration shops in the black market by using the Right to Information.

Revat Ram and his friends used the Act to get all records of their ration shop in Himmatsar village and exposed how grains meant for the poor were being black-marketed at a ration shop in Bikaner.

After the move, the villagers got the dealer removed.

“They threatened us and also offered money. But we refused, because we wanted to ensure that people in our village get the grains they deserve from the government. And we did not get scared in fighting for the rights of our people,” said Revat Ram, Secretary, Jagruk Yuvak Manch.

## **Pay compensation**

Besides losing dealership, the ration shopkeeper was also forced to pay poor families in the village over Rs. four lakh, the cash equivalent of the grains he had sold illegally.

Revat Ram and his friends used the Act to get all records of their ration shop in Himmatsar village and by exposing how grains meant for the poor were being black-marketed at a ration shop in Bikaner district.

After the move the villagers got the dealer removed.

“Earlier we used to be afraid that if we speak against the Sarpanch, he will not give us jobs under drought relief. But now we feel bolder and think that through the new law we can put an end to his frauds,” said a local resident.

And now it seems people across Rajasthan are keen to use their information rights. Bunglings have led to 15 Sarpanches being

removed and a dozen officials suspended.

*Rajan Mahan*  
*Thursday, July 6, 2006 (Bikaner)*

## **Fake muster rolls**

Frauds confirmed through the Information Act have shown that in Panchayats across the state fake muster rolls are rampant.

Many schools and health centres exist only on paper as funds meant for the poor are diverted to the powerful in most villages.

“People need to fight together to get information. They need to realise that this is a crucial right and must fight unitedly to get information which is now our legal right, “ said Chetan Ram, Co-ordinator, Urinal Jyoti.

It was a grassroots mobilisation in rural Rajasthan, which inspired the Right to Information movement in the entire country.

But despite being compulsory under the Central Act, Information Officers have not been designated in most departments.

Government Offices in the district do not even have signboards on how to use the Right to Information.

## **Reviving Panchayat Social Justice Committees in Gujarat**

According to the Gujarat Panchayat Act, it is mandatory for every Panchayat to set up Social Justice Committees (SJC). These Committees are statutory bodies meant to ensure the participation of weaker sections of society such as women, dalits and tribals in the decision-making process of the Gram Panchayat. The elected members of the Panchayat nominate adult representatives belonging to these communities to the SJC in every village. The SJC has a distinct identity within the Panchayat structure. It is empowered to identify developmental requirements in the village with particular emphasis on the needs of these marginalized communities and make recommendations to the Gram Panchayat to include these demands in its budget. The Panchayat has a duty to undertake the

implementation of these projects upon receiving sanction from the administration. During the three decades since the passing of the Panchayat Act, these committees have at best remained inactive or at worst exist only on paper. In hundreds of villages these committees just do not exist at all.

A few years ago, CHRI started working with a few rural communities in Panchmahal district aimed at increasing awareness about their rights and entitlements and the laws and procedures that relate to their everyday lives. The larger objective of this intervention is to make access to justice a reality for people who need it most. Some of the people we were working with emerged as natural leaders and decided to take on the work of spreading awareness in a similar manner. They are also assisting the larger community with everyday problem solving.

In the course of their work they realized that a large number of problems were related to the working of panchayats and could in fact be addressed at that level itself. So people sat together and brain stormed about solving village level problems. The solution in this case was to increase people's participation in gram sabhas to make them aware of what welfare schemes were being made for them and what entitlements were available to them. During this period we learnt about the SJC, its roles and responsibilities and the powers with which the SJC members were vested. However, we also learnt that these committees were nonfunctional almost everywhere. The brainstorming pointed to the need for activating SJCs mandated to work towards securing equality and social justice within villages.

We undertook a survey in 13 villages to ascertain the existence of the SJC and assess its working. The survey revealed that SJCs were formed only in four villages. In two villages the Talatis (revenue officials) informed us that the names of the members of the SJCs were not readily available with them. They promised to provide us with these names the following week. We collected the list of SJC members the following week. Believe it or not, in three villages, members of the upper castes had been

nominated to the SJC in place of dalits and adivasis. In the remaining villages there was no SJC at all. Our curiosity did not end there. With the names of committee members in hand we quizzed them about their roles and responsibilities. It was no surprise that they appeared clueless about the existence of the SJC and had no idea that they were actually members of such a committee.

This survey prompted us to find out the status of these committees in the whole taluka. By this time the new Right To Information (RTI) Act was in place. The easiest way of obtaining the above information would be to make an application under the Act rather than go to every village conducting a survey. Zakir filed the RTI application before the Taluka Development Officer (TDO) who is the designated Public Information Officer (PIO). Zakir asked for the names and addresses of the SJC members in all villages falling within the Kalol Taluka. He also asked for copies of the minutes of the Taluka level meetings of the chairpersons of the SJC. Such meetings are required to be conducted once in six months.

Zakir received a response to his application a week later but not in writing. The TDO's secretary telephoned Zakir and asked him to visit the office personally. This is contrary to the spirit of the Act which requires nothing more than an application (and fees) from the requestor to get information. Nowhere in the Act or in the rules is there a provision which requires the applicant to appear before the PIO to justify his application. Nevertheless, Zakir decided to meet the PIO.

When Zakir met the TDO he was not in the least forthcoming or open. He told Zakir that the formation of the SJC was not the responsibility of the TDO. Instead Zakir was advised to collect the information from the talati of each village if he was so interested. Zakir however argued his case by saying that the Panchayat Act very clearly states that the overall responsibility of ensuring formation and smooth running of the SJC lies with the TDO. The TDO was taken aback. When he realized that the law required him to give the information requested, he agreed. However, the information

was not available with him so he asked Zakir to come back after a few days. He assured Zakir that he would issue a circular to all the talatis of the taluka asking them to provide him with the necessary information regarding the SJC and the meetings held so far.

After this circular was issued the talatis got busy. As expected the committees in most villages were not even formed. The talatis started forming the committees and completed the required formalities. A mere application under the RTI Act has brought these committees into existence - almost three and a half years after the last Panchayat elections.

Once the committees were formed and the names of members were available, the talatis provided the information to the TDO. The TDO, in turn, got busy compiling this information. He realized that he would not be able to provide the information within the stipulated 30 days. He informed Zakir that he was compiling the information and that it would take some time and requested him not to file an appeal against the delay. He guaranteed Zakir that the information would be provided to him.

After 45 days of filing the application, Zakir got the list of SJC members across the taluka. However, the minutes of the SJC meetings held at taluka level were not provided. What was in fact provided was merely a copy of the concerned pages of the Panchayat resolution book. This contained a list of names of people who attended the meeting and the dates when these meetings were held. This information definitely did not qualify as minutes of the meetings. However, the TDO was in no position to provide the minutes because in reality these minutes did not exist. This was simply because meetings of the SJCs had never taken place. The entries in the resolution book were a mere formality that was completed to show that meetings were held. When we asked the TDO about the meetings he said that the resolution book was all that was available with him. And for sure he was not lying.

Today across the taluka these committees have become functional. Of the initial 13 villages that we targeted we continue to

work in those villages raising awareness amongst its members about the functions of these committees, the motive behind the creation of these committees and the roles, responsibilities and duties of committee members. It will take a long time before anything changes. It is going to be a long journey but we are glad it has begun.

*Compiled by  
Sonal Thacker and Navaz Kotwal for CHRI,  
August 2006*

*[Zakir is one of 30 men and women in Panchmahals district, Gujarat trained by the Commonwealth Human Rights Initiative to use the RTI Act since 2005]*

## **Restores people's right to water in Keolari**

In December 2006 Munnalal began constructing a house on a small plot of land adjacent to a public wall. On the 11<sup>th</sup> of the same month he encroached upon almost 10 ft of land belonging to the panchayat and constructed a boundary wall around the well in a bid to claim it for himself. Villagers whose access to the well was cut off tried to reason with Munnalal, in vain.

Later the same day, about 65 villagers drafted a complaint against this encroachment and submitted it to the Sarpanch. The Sarpanch, Smt. Panchhibai Patel maintained that there was no case of encroachment and that Munnalal had acted within his rights on his own land. Not willing to be cowed down by the inaction of the Sarpanch the complainants posted copies of their complaint to the Tehsildar and the chief executive officer of the Janpad Panchayat praying for remedial action. The officer did not respond to the complaint.

On 9th January 2007 a Samsaya Nivaran Shibir (public grievance redressal camp) was held in Keolari. Such camps are routinely organised by the district administration to help resolve problems of villagers on the spot. This camp was attended by senior officials of various departments. Villagers filed their complaint about the encroachment of panchayat land and the illegal take over of the public well by Munnalal. No action was taken on this complaint. It

seemed like the entire administration was colluding with the wrongdoer.

Two days later the disappointed villagers sent their complaint to the District Collector. No action was taken at this level either. Meanwhile Munnalal began threatening the families of villagers who had signed on the complaint. Fed up with the inaction of the gram panchayat and Janpad panchayat officers, the villagers managed to get the local editions of popular Hindi newspapers to publish this story. Even this move did not have any effect on the administration. Deprived of access to the common well, residents began drawing water from the tube well situated at the village school. Munnalal and his henchmen began troubling the women relatives of the complainants who walked up to the tube well to fetch water. When authorities refuse to take action against wrongdoers, they only end up providing a cloak of impunity to the latter.

Ravi Patel, one of the complainants heard about RTI at an awareness camp organised by the Madhya Pradesh Suchana Adhikar Abhiyan in a nearby village. On 21st February he visited the office of Sandhan, the secretariat of the Abhiyan situated in Katni, seeking advice for solving Keolari's problem. Volunteers of the Abhiyan coached him in the uses of the RTI Act and helped him draft an information request. In his application Ravi Patel asked the following questions:-

- (1) Name and designation of the officer who was responsible for taking action on the complaint filed by the 65 signatories.
- (2) Daily progress report of action taken to investigate the complaint.
- (3) Name and designation of all officers who are empowered to take action on the basis of such complaints.
- (4) What action would be taken by the administration against officers who were negligent to take action on the complaint?

(5) The period within which action would be taken to clear the illegal encroachment on panchayat land and end illegal custody of the public well.

Ravi Patel and Vishwajeet Maity, an Abhiyan volunteer managed to submit the application at the Janpad Panchayat Office on 22nd February. However, when they visited the Tehsildar's office to file a similar application they met with resistance. The Tehsildar reasoned that the information they sought was exempt from disclosure under section 8, so there was no point accepting the application. Dr. Rakesh Ranjan, Convenor of the Abhiyan visited the Tehsildar's office the next day to find out why he had refused to receive the information request. He demanded that the Tehsildar record his refusal in writing as requestors had a right to know the reasons for refusal. The Tehsildar, hard pressed by the persistence of Ravi Patel and the Abhiyan, assured them that he would investigate the complaint and that there was no need to file the RTI application.

Not to give up easily, the requestors and the Abhiyan volunteers demanded that he reply to the RTI application first instead of acting upon the complaint. They also warned him that they would write to his senior officers about his lack of compliance with the RTI Act. Fearing the possibility of a penalty and disciplinary action under the RTI Act, the Tehsildar agreed to receive the information request and advised the applicant and the Abhiyan volunteers to come back to his office on 10<sup>th</sup> March for a reply. He also summoned the Deputy Tehsildar and the Revenue Inspector in their presence and rebuked them for not acting upon the complaint.

Meanwhile, Ravi Patel wanted to strengthen their case with documents to show that the disputed well was indeed common property. He filed an RTI application with the secretary of the gram panchayat seeking copies of the gift deed signed by Munnalal's father and details of any funds spent by the panchayat on the maintenance of the well. Ravi Patel received the requested information within two days. The documents showed that Munnalal's father had indeed gifted the well to the panchayat in 1997. The

panchayat had spent Rs. 11,6081 in July that year for strengthening its platform and walls.

Armed with this information, volunteers of the Abhiyan visited Keolari on 23<sup>rd</sup> February to collect photographic evidence of the encroachment and the illegal occupation of the well. They were pleasantly surprised to see the Revenue Inspector and the village patwari taking measurements of the disputed property. They categorically told Munnalal that he had illegally encroached on Panchayat land and taken custody of the well. They served a notice on him requiring him to demolish the wall within a week. If not the panchayat would demolish the wall and realise the demolition related expenses from Munnalal.

Ravi Patel visited the office of the Abhiyan on 28th February with the good news that Munnalal had begun demolishing the wall, villagers were able to collect water from the well as before.

Meanwhile, Munnalal's brother continues to threaten people for complaining to the authorities. But the villagers are not so scared like before because they have realised they have the power of RTI with them now. They have learnt that when nothing else succeeds, RTI will help them force the public authorities to work according to the established rules and norms. They have succeeded in protecting their fundamental human right to water using their right to information as a tool.

*Compiled by Venkatesh Nayak for CHRI*

*{Dr. Rakesh Ranjan is Convenor and Vishwajeet Maly, an active volunteer of the Madhya Pradesh Suchana Adhikar Abhiyan-a network of advocates and activists working to spread awareness about RTI in more than 20 districts. CHRI works with the Abhiyan to build capacity of civil society to use RTI to improve governance in Madhya Pradesh.}*

## **RTI exposes employment generation scheme**

Rajani, an RTI activist trained by Sakshi, was concerned about the poor implementation of the National Rural Employment Guarantee Act (NREGA). Rajani asked for the details of the projects

implemented under NREGA in Santhpur Village in Bidar District of Karnataka.

She received four project reports for Santhpur village but three of the project reports did not have any details of the project, making inspection impossible. Further, the people employed in all four projects were the same (members of a local politician family who have never stepped out ever for any hard labour). None of the projects and labour rolls contained signatures or thumb impressions of the recipients. In a hearing on a complaint filed by Rajani at the Karnataka Information Commission, the Commissioner pulled up the CEO of the District and asked him to investigate the matter immediately and report back to the Commission. The CEO's report is awaited. In the meanwhile, Rajani has held a press conference in Bidar to highlight the issue and fifteen more RTI applications were filed.

The villagers of Santhpur who accompanied Rajani to the hearing were delighted. "Whenever we went to meet the CEO he would refuse to even meet us. We really feel empowered to see him being forced to come to Bangalore and being pulled up for not doing his work properly that too in front of us." they said.

# The Road Ahead

**ENACTMENT OF** the Right To Information Act 2005 is not enough. The most important question is how to reach to the maximum number of citizens across the country so that this Right to Information is known to all, is availed without any fear and the concerned authorities feel duty bound to act, to prepare themselves, to train themselves and to fully cooperate with the will of the citizens.

No doubt, the Act provides for providing *suo-motu* information. Section 4 (1) (b) of the Act in particular requires every public authority to publish sixteen categories of information. It is not optional, it is mandatory. Dissemination of information is the key to success of the Act. Section 26 of the Act further supports this vital aspect. Communication of Information on internet is not enough. How many have access to internet. Dissemination of information may be done through notice boards, newspapers, public announcement systems, media broadcast, etc. in local language.

The report of Pricewater House Coopers, appointed by the Department of Personnel and Training, Government of India is already available with the Government of India with regard to key issues and constraints in implementing the RTI Act. Final report is given in appendix IV.

In the opinion of the author of this book, there is still a lot to be done with all vigour and seriousness. It has to go to the lowest level of the society, local self government institutions such as Gram Panchayats. In the entire length and breadth of the country, voluntary organisations, banks, particularly State Bank of India having maximum branches, etc. should be nodal agencies to create a well informed mass of people with full awareness.

On the principle of programme evaluation review technique, the implementation of the RTI Act 2005 should be examined as under :-

### **1. Low Awareness**

Review should be undertaken at regular intervals and the reports of such exercises should be made public *suo-motu* keeping in view the spirit of the RTI Act 2005.

### **Free Publicity**

The salient features of the Right to Information Act 2005, formats of application form in local languages should be available displayed in all post offices, local self Government Offices at block and Taluka level, may be near Railway Ticket counters, etc.

### **2. Offices of Chief Information Commission & State Information Commission**

These offices are located at Delhi and State Capitals. If any complaint is addressed to these offices the parties are called there. It is self defeating and causes discouragement and cost to the information seekers. The information commissions should, instead, move and hold sittings at least at the level of commissioner's office.

Further, there is time limit for CPIO, first appellate authority but there is no time limit for Central or State level commissions. Each complaint must be addressed within fixed time frame as expeditiously as possible.

### **3. Workshops for Information Givers of Each Public Authority**

There should be regular training of all information givers at the level of APIO, CPIO, first Appellate Authorities, in order to change the mindset, to update them, to have feedback from them and to encourage them to rise to the occasion so that they could play their role of a friend, philosopher and guide.

#### **4. Definition of Public Authority/Substantial Financing**

It should be clarified, be given wider meaning/coverage, broadly all bodies should be covered where there are public transactions and interest of public is involved.

#### **5. Protection of RTI Activists who Act as Whistle Blowers**

Let there be a law to protect them.

#### **6. Internal Audit**

Let there be internal audit of the implementation of the provisions of the Act.

Effective use of RTI Act has the potential to enrich our democracy.

रजिस्ट्री सं० एल-( एन )04/0007/2003-05REGISTERED NO. DL-(N)04/0007/2003-


**भारत का राजपत्र**  
**The Gazette of India**

असाधारण

**EXTRAORDINARY**

**भाग II-खण्ड I**

**PART II - Section**

**प्राधिकार से प्रकाशित**

**PUBLISHED BY AUTHORITY**

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नई दिल्ली, मंगलावार, जून 21, 2005/ज्येष्ठ 31, 1927

**NEW DELHI, TUESDAY JUNE 21, 2005/JYAIKTHA 31, 1927**

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as separate compilation.

**MINISTRY OF LAW AND JUSTICE**

**(Legislative Department)**

*New Delhi, the 21st June, 2005/Jyaistha 31, 1927 (Saka)*

The following Act of Parliament received the assent of the President on the 15th June, 2005, and is hereby published for general information:-

**THE RIGHT TO INFORMATION ACT, 2005**

No. 22 of 2005

[15th June, 2005.]

**AN ACT** to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established Democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

## CHAPTER I

### Preliminary

Short title,  
extent and  
commencement.

**1.** (1) This Act may be called the Right to Information Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) The provisions of sub-section (1) of section 4, sub-sections (1) and (2) of section 5, sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.

Definitions.

**2.** In this Act, unless the context otherwise requires,-

(a) “appropriate Government” means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-

(i) by the Central Government or the Union territory administration, the Central Government;

(ii) by the State Government, the State Government;

(b) “Central Information Commission” means the Central Information Commission constituted under sub-section (1) of section 12;

(c) “Central Public Information Officer” means the Central Public Information Officer

designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5;

(d) "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12;

(e) "competent authority" means-

- (i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union Territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
- (ii) the Chief Justice of India in the case of the Supreme Court;
- (iii) the Chief Justice of the High Court in the case of a High Court;
- (iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
- (v) the administrator appointed under article 239 of the Constitution;

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by

a public authority under any other law for the time being in force;

(g) “prescribed” means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

(h) “public authority” means any authority or body or institution of self-government established or constituted-

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government,

and includes any-

- (i) body owned, controlled or substantially financed;
- (ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;

(i) “record” includes

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device;

(j) “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

(k) “State Information Commission” means the State Information Commission constituted under sub-section (1) of section 15;

(l) “State Chief Information Commissioner” and “State Information Commissioner” mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (3) of section 15;

(m) “State Public Information Officer” means the State Public Information Officer designated under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5;

(n) “third party” means a person other than the citizen making a request for information and includes a public authority.

## CHAPTER II

### Right To Information and Obligations of public Authorities

**3.** Subject to the provisions of this Act, all citizens shall have the right to information. Right to information.

**4. (1)** Every public authority shall-

- (a)** maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;
- (b)** publish within one hundred and twenty days from the enactment of this Act,-
  - (i)** the particulars of its organisation, functions and duties;
  - (ii)** the powers and duties of its officers and employees;
  - (iii)** the procedure followed in the decision making process, including channels of

supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (xiii) particulars of recipients of concessions, permits or authorisations granted by it;
- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) the names, designations and other particulars of the Public Information Officers;

- (xvii) such other information as may be prescribed; and there after update these publications every year;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
- (d) provide reasons for its administrative or quasi judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

*Explanation.*—For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicating the information to the public through

notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

**5. (1)** Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

Designation  
of Public  
Information  
Officers.

**(2)** Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

**(3)** Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

6. (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to-

Request for obtaining information.

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,-

- (i) which is held by another public authority; or
- (ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

7. (1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Disposal of request.

Provided that where the information sought for concerns the life or liberty of a person, the same shall

be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving-

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may

be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,-

- (i) the reasons for such rejection;
- (ii) the period within which an appeal against such rejection may be preferred; and

(iii) the particulars of the appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

**8. (1)** Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

Exemption  
from  
disclosure of  
information.

(j) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

19 of 1923  
(Official  
Secrets Act).

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

**9.** Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

Grounds for  
rejection to  
access in  
certain cases.

**10. (1)** Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

Severability.

(2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—

(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) the name and designation of the person giving the decision;

(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

**11. (1)** Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of

Third party information.

the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

## CHAPTER III

### The Central Information Commission

**12.** (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

Constitution  
of Central  
Information  
Commission

(2) The Central Information Commission shall consist of-

- (a) the Chief Information Commissioner; and
- (b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of-

- (i) the Prime Minister, who shall be the Chairperson of the committee;
- (ii) the Leader of Opposition in the Lok Sabha; and
- (iii) a Union Cabinet Minister to be nominated by the Prime Minister.

*Explanation.*-For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not

been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

**13. (1)** The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Term of office  
and conditions  
of service.

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

(3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

(5) The salaries and allowances payable to and other terms and conditions of service of-

- (a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;
- (b) an Information Commissioner shall be the same as that of an Election Commissioner:

Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

**14. (1)** Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.

Removal of  
Chief  
Information  
Commissioner  
or  
Information  
Commissioner.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any

Information Commissioner if the Chief Information Commissioner or an Information Commissioner, as the case may be,-

- (a) is adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
- (c) engages during his term of office in any paid employment outside the duties of his office; or
- (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or an Information Commissioner.

(4) If the Chief Information Commissioner or an Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

## CHAPTER IV

### The State Information Commission

**15.** (1) Every State Government shall, by notification in the official Gazette, constitute a body to be known as the (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

Constitution  
of State  
Information  
Commission.

(2) The State Information Commission shall consist of-

- (a) the State Chief Information Commissioner, and
- (b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of-

- (i) the Chief Minister, who shall be the Chairperson of the committee;
- (ii) the Leader of Opposition in the Legislative Assembly; and
- (iii) a Cabinet Minister to be nominated by the Chief Minister

*Explanation.*-For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the

Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

**16. (1)** The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Term of office and conditions of service.

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:

Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15:

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

(3) The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.

(5) The salaries and allowances payable to and other terms and conditions of service of-

- (a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;
- (b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

17. (1) Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or

a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be,-

- (a) is adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or
- (c) engages during his term of office in any paid employment outside the duties of his office; or
- (d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

(4) If the State Chief Information Commissioner or a State Information Commissioner is in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit there of or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

## CHAPTER V

### **Powers and functions of the Information Commissions, appeal and penalties**

**18. (1)** Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,-

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, 5 of 1908 in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

**19.** (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made

Appeal.

or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-

- (i) by providing access to information, if so requested, in a particular form;
- (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
- (iii) by publishing certain information or categories of information;
- (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
- (v) by enhancing the provision of training on the right to information for its officials;
- (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

**20.** (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may

Penalties.

be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

## CHAPTER VI

### Miscellaneous

**21.** No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Protection of action taken in good faith.

**22.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

**23.** No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

Bar of jurisdiction of courts.

**24. (1)** Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Act not to apply to certain organisations.

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information

Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.

**25. (1)** The Central Information Commission or State Information Commission, as the case may

Monitoring  
and Reporting.

be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.

(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(3) Each report shall state in respect of the year to which the report relates,-

- (a) the number of requests made to each public authority;
- (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;
- (c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;
- (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

- (e) the amount of charges collected by each public authority under this Act;
- (f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;
- (g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House.

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

**26. (1)** The appropriate Government may, to the extent of availability of financial and other resources,-

Appropriate Government to prepare programmes.

- (a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;
- (b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;
- (c) promote timely and effective dissemination of accurate information by public authorities about their activities; and
- (d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

**(2)** The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

(3) The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include-

- (a) the objects of this Act;
- (b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (1) of section 5;
- (c) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;
- (d) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;
- (e) the assistance available from the Central Information Commission or State Information Commission, as the case may be;
- (f) all remedies in law available regarding an act or failure to act

in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;

- (g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;
- (h) the notices regarding fees to be paid in relation to requests for access to an information; and
- (i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

(4) The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

**27.** (1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power to make rules by appropriate Government.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;
- (b) the fee payable under sub-section (1) of section 6;
- (c) the fee payable under sub-sections (1) and (5) of section 7;

- (d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;
- (e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and
- (f) any other matter which is required to be, or may be, prescribed.

**28.** (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely-

- (i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;
- (ii) the fee payable under sub-section (1) of section 6;
- (iii) the fee payable under sub-section (1) of section 7; and
- (iv) any other matter which is required to be, or may be, prescribed

Power to make rules by competent authority.

**29. (1)** Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**(2)** Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

**30. (1)** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

**(2)** Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

**31.** The Freedom of Information Act, 2002 is hereby repealed.

## The First Schedule

*[See sections 13 (3) and 16(3)]*

Form of oath or affirmation to be made by the Chief Information Commissioner/the Information Commissioner/the State Chief Information Commissioner/the State Information Commissioner

“I.....having been appointed Chief Information Commissioner /Information Commissioner / State Chief Information Commissioner / State Information Commissioner  
swear in the name of God solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.”.

## The Second Schedule

(See section 24)

### Intelligence and Security organisations established by the Central Government

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Special Service Bureau
16. Special Branch (CID), Andaman and Nicobar.
17. The Crime Branch-C.I.D.-CB, Dadra and Nagar Haveli.
18. Special Branch, Lakshadweep Police.

T. K. VISWANATHAN,  
*Secy. to the Govt. of India.*

# Right to Information Rules-2012

Ministry of Personnel, Public Grievances and Pension (Dept of Personnel and Training), Notice, No. G.S.K 603(E), dated July 31, 2012 published in the Gazette of India, Extra, Part-II, Section3(I), dated 31<sup>st</sup> July,2012, pp,5-8, No. 390

[F. No. 1/35/2009-1B]

In exercise of the power conferred by section 27 of the Right to Information Act, 2005 (22 of 2005) and in supersession of the Central Information Commission (Appeal Procedure) Rules, 2005 and the Right to Information (Regulation of Fee and Cost) Rules, 2005 except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules namely-

1. **Short title and commencement-** (1) These rules may be called the **Right to Information Rules, 2012**
2. They shall come into force on the date of their publication in the Official Gazette.
2. **Definitions**-In these rules, unless the context otherwise requires-
  - (a) “Act” means the Right to Information Act, 2005 (22 of 2005)
  - (b) “Commission” means the Central Information Commission constituted under sub-section (1) Section 12 of the Act.
  - (c) “First Appellate Authority” means an officer in the public authority who is senior in rank to the Central Public Information Officer to whom an appeal under sub-section (1) of Section 19 of the Act lies :
  - (d) “Registrar” means an officer of the Commission so designated and includes an Additional Registrar, Joint Registrar and Deputy Registrar.

- (e) "Section" means a section of the Act;
- (f) All other words and expressions used herein but not defined in these rules shall have the same meanings assigned to them in the Act.

3. **Application Fee**-An application under sub-section (1) of Section 6 of the Act shall be accompanied by a fee of Rupees Ten and shall ordinarily not contain more than five hundred words, excluding Annexures, containing address of the Central Public Information Officer and that of the applicant.

Provided that no application shall be rejected only on the ground that it contains more than five hundred words.

4. Fees for providing information- Fee for providing information under sub- section (4) of Section 4 and sub-sections (1) and (5) of Section 7 of the Act shall be charged at the following rates, namely-

- (a) Rupees Two for each page in A-3 or smaller size paper;
- (b) Actual cost or price of photocopy in large size papers;
- (c) Actual cost or price for samples or models;
- (d) Rupees Fifty per diskette or floppy;
- (e) Price fixed for a publication or Rupees Two per page of photocopy for extracts from the publication;
- (f) No fee for inspection of records for the first hour of inspection and a fee of Rupees 5 for each subsequent hour or fraction thereof; and
- (g) So much of postal charge involved in supply of information that exceeds fifty rupees.

5. **Exemption from Payment of Fee**.-No fee under Rule 3 and Rule 4 shall be charged from any person who is below poverty line provided a copy of the certificate issued by the appropriate Government in this regard is submitted along with the application.

**6. Mode of Payment of Fee.-** Fees under these rules may be paid in any of the following manner, namely—

- (a) In cash, to the public authority or to the Central Assistant Public Information Officer of the public authority, as the case may be, against a proper receipt; or
- (b) By demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority; or
- (c) By electronic means to the Accounts Officer of the public authority, if facility for receiving fees through electronic means is available with the public authority.

**7. Appointment of the Secretary to the Commission.-** The Central Government shall appoint an officer not below the rank of Additional Secretary to the Government of India as Secretary to the Commission.

**8. Appeal to the Commission.-** Any person aggrieved by an order passed by the First Appellate Authority or by non-disposal of his appeal by the First Appellate Authority may file an appeal to the Commission in the format given in the Appendix and shall be accompanied by the following documents duly authenticated and verified by the appellant namely—

- (i) a copy of the application submitted to the Central Public Information Officer;
- (ii) a copy of the reply received, if any, from the Central Public Information Officer;
- (iii) a copy of the appeal made to the First Appellate Authority;
- (iv) a copy of the order received, if any, from the First Appellate Authority;
- (v) copies of other documents relied upon by the appellant and referred to in his appeal; and

(vi) an index of the documents referred to in the appeal.

**9. Return of Appeal-** An appeal may be returned to the appellant, if it is not accompanied by the documents as specified in Rule 8 for removing the deficiencies and filing the appeal complete in all respects.

**10. Process of Appeal-** (1) On receipt of an appeal, if the Commission is not satisfied that it is a fit case to proceed with, it may, after giving an opportunity of being heard to the Appellant and after recording its reasons, dismiss the appeal;

Provided that no appeal shall be dismissed only on the ground that it has not been made in the specified format if it is accompanied by documents as specified in Rule 8.

(2) The Commission shall not consider an appeal unless it is satisfied that the appellant has availed of all the remedies available to him under the Act.

(3) For the purposes of sub-rule (2), a person shall be deemed to have availed of all the remedies available to him under the Act:

(a) if he had filed an appeal before the First Appellate Authority and the First Appellate Authority or any other person competent to pass order on such appeal had made a final order on the appeal; or

(b) where no final order has been made by the First Appellate Authority with regard to the appeal preferred, and period of forty-five days from the date on which such appeal was preferred has elapsed.

**11. Procedure for deciding appeals-** The Commission while deciding an appeal may-

- (i) receive oral or written evidence on oath or on affidavit from concerned or interested person;
- (ii) peruse or inspect documents, public records or copies thereof;
- (iii) inquire through authorized officer further details or facts;

- (iv) hear Central Public Information Officer, Central Assistant Public Information Officer or the First Appellate Authority or such person against whose action the appeal is preferred, as the case may be;
- (v) hear third party; and
- (vi) receive evidence on affidavits from Central Public Information Officer, Central Assistant Public Information Officer, a First Appellate Authority and such other person against whom the appeal lies or the third party.

**12. Presence of the appellant before the Commission:**

- (1) The appellant shall be informed of the date at least seven clear days before the date of hearing.
- (2) The appellant may be present in person or through his duly authorized representative or through video conferencing, if the facility of video conferencing is available, at the time of hearing of the appeal by the Commission.
- (3) Where the Commission is satisfied that the circumstances exist due to which the appellant is unable to attend the hearing, then, the Commission may afford the appellant another opportunity of being heard before a final decision is taken or take any other appropriate action as it may deem fit.

**13. Presentation by the Public Authority-** The public authority may authorize any representative or any of its officers to present its case

**14. Service of notice by Commission-** The Commission may issue the notice by name, which shall be served in any of the following modes, namely-

- (i) service by the party itself;
- (ii) by hand delivery (dasti) through Process Server;

- (iii) by registered post with acknowledgement due;
- (iv) by electronic mail in case electronic address is available.

15. **Order of the Commission-** The order of the Commission shall be in writing and issued under the seal of the Commission duly authenticated by the Registrar or any other officer authorized by the Commission for this purpose.

## APPENDIX

### *Format of Appeal*

*(See Rule 8)*

1. Name and address of the appellant
2. Name and address of the Central Public Information Officer to whom the application was addressed
3. Name and address of the Central Public Information Officer who gave reply to the application
4. Name and address of the First Appellate Authority who decided the First Appeal
5. Particulars of the application
6. Particulars of the order(s) including number, if any against which the appeal is preferred
7. Brief facts leading to the appeal
8. Prayer or relief sought
9. Grounds for the prayer or relief
10. Any other information relevant to the appeal
11. Verification/authentication by the appellant

## **Implementing the Act : Key Issues and Constraints**

**A Study by Price Water House Coopers (June 2009)**

### **Low Public Awareness**

#### **Issues faced on the Demand Side**

##### **(I) Awareness**

While the Act has been clear in defining the responsibility of the appropriate Government, with respect to creating awareness of the Act, there has been lack of initiative from the Government's side. The efforts made by appropriate Governments and Public Authorities have been restricted to publishing of rules and FAQs on websites. These efforts have not been helpful in generating mass awareness of the RTI Act. As compared to RTI Act, the common citizens (and disadvantaged communities) are significantly more aware of other Government schemes focused on socio-economic development.

##### **(2) Constraints faced in filing applications**

Analysing the issues highlighted in the section, it is clear that the appropriate Governments and the Public Authorities have taken inadequate steps to make the RTI process citizen-friendly. The process of RTI application submission has not been designed keeping in view the needs and convenience of the citizens.

##### **(3) Poor Quality of Information Provided**

The quality of response provided can be a direct consequence of:

- The record management practices within the Public Authority;
- The transparency in its processes

- The training provided to the concerned PIO
- Drafting of the RTI application itself

## **(4) Constraints faced in inspection of records**

While analysing the above issue during discussions with Civil Society Organizations and PIOs it emerged that there is inadequate awareness of this provision of the RTI Act. This inadequacy can be linked to inadequate awareness of the citizens and inadequate training of the PIOs to utilise this provision effectively.

### **Issues faced on the “Supply Side”**

#### **(1) Failure to provide information within 30 days**

As per the Act, the information has to be provided within the stipulated time. However, as per our survey, it was highlighted by the PIOs that they are challenged to provide the information within the stipulated time due to inadequate record management procedures with the Public Authorities. It is a known fact that the record keeping process within the Government is a big challenge. This situation is further aggravated due to non-availability of trained PIOs and the enabling infrastructure (computers, scanners, internet connectivity, photocopiers etc.). Public authorities need to meet the requirements of the RTI Act to review their current record keeping procedures and other constraints and plan out the resources.

#### **(2) Inadequate trained PIOs and First Appellate Authorities**

The training of PIOs is a big challenge primarily due to (a) huge number of PIOs to be trained (b) frequent transfers of PIOs to other posts. The training institutions also face a huge constraint with respect to the availability of training resources. Also, it was observed that in the current manner of providing training, there is low involvement of the Public Authority and an inadequate sense of urgency in getting their PIOs trained. There is a significant dependence on the ATI institutes for training of the PIOs. At the same time, it is also noted that there are a large number of

non-profit organizations which are carrying out the training in official/unofficial capacities-these are untapped resources which could be utilized by the PA, appropriate Government and Training Institutes.

### **(3) Obsolete record management guidelines**

The situation can be summarized as follows:

- The current record management guidelines at the Centre and in most states are not geared to meet the requirements specified under the RTI Act
- There is lack of any electronic document management system in any of the Departments (*basis: the Information Provider Survey*).
- Majority of the PIOs surveyed do not even maintain the list of RTI applications electronically.

### **(4) Non-availability of basic infrastructure**

As has been mentioned earlier, the issue of implementation of the RTI Act at an operational level rests with the Public Authority. The appropriate Government and Information Commission can play only a facilitative and adjudicative role. Unless the Public Authorities assess the issues of implementation and identify resources required, there would not be any focus on implementation. The ARC report had mentioned that Government of India may allocate one per cent of the funds of the Flagship Programmes for a period of five years for improving the infrastructure requirements. However, this has not been implemented.

### **(5) Lack of motivation among PIOs**

Appointing PIOs at a field level facilitates accessibility to the PIO. However, this may also be counterproductive, as it may lead to dilution of accountability of senior officials.

### **(6) Ineffective implementation of Section 4(I) (b)**

There is no/inadequate mechanism within the Public Authorities to implement the provisions of the Act. Neither the State

Government nor the Information Commissions have taken adequate steps to ensure compliance of this basic minimum requirement for filing RTI applications.

## **Issues Faced at Information Commission**

### **(1) SIC Annual reports**

During the information seeker survey it was noted that there is no centralized data base of RTI (at the State/Centre level) applicants (which was one of the reasons resulting in delay in conducting the survey). A centralized database of all RTI applicants with their information requests and responses from information providers would enable the Information Commission to publish more accurate numbers in the annual reports. Given the current situation, neither the State Government nor the State Information Commission is in a position to confirm the number of Public Authorities within a Department and therefore the details on the number of applications filed. Hence if a Public Authority possesses a centralized and web-based data, it can send the information to the State Information Commission for accurate timely compilation and reporting.

### **(2) Perception of being “lenient” towards PIOs**

It is a matter of introspection for the Information Commission that in the cases where the citizen has not got the information within the stipulated time, then who should be held responsible. If PIO as a person is not responsible, then it has to be a systemic failure within the Public Authority. However, as highlighted in the next sub-section, the Information Commission does not possess adequate monitoring and review mechanism to track the failures of the Public Authorities in complying with the RTI Act.

### **(3) Lack of Monitoring and Review mechanism**

One of the most important roles of the Information Commission is to monitor and review the Public Authority and initiate actions to make them comply with the spirit of the Act. However, this has been one of the weakest links in the implementation of the

Act. It is acknowledged and appreciated that the Information Commissions have primarily been spending most of their time in “hearings” and disposing off appeals. However, monitoring the Public Authority for compliance of the Act is also an important aspect of the role of the Information Commission, which could result in reducing the number of appeals.

Given the huge effort involved in identifying the Public Authority and their non-compliance issues, it is imperative that the Information Commission mobilize the citizens/use third party agencies in identification of non-compliance by the Public Authorities.

#### **(4) High level of pendency**

The pendency at the Information Commission is a huge challenge. Unless and until the pendency is kept at manageable level, the objective of the Act would not be met. High pendency of appeals is due to non optimal processes for disposing of appeals and complaints.

#### **(5) Geographical spread of the Information Commissions**

The benefits of setting up regional offices far outweigh the initial capital costs involved in setting them up.

#### **(6) Variation in assumption of role by SIC and State Governments**

The Act is quite unambiguous in terms of the responsibilities of the appropriate Government and the Information Commission. However, as per the current situation on the ground level, currently the Information Commission is as effective as the support provided by the appropriate Government. The Information Commission is always dependent on the financial and infrastructural support from the Government. In some of the States, (like UP), the effectiveness of communication/guidance from the State Government carries more emphasis than the communication by the State Information Commission.

## Summarizing issues and constraints

While assessing the entire situation, the following themes emerge:

- The Public Authorities have to enhance the level of ownership to ensure the RTI delivery happens as per the spirit of the Act. They have to be ultimately responsible for.
  - Identifying the gaps in their offices in the delivery of the information and thereafter identify the resources needed and appropriately budget for it.
  - Maintenance of the information required to be furnished to the State Information Commission as per Section 25(3).
- The role of the Centre/State Government is to facilitate the Public Authorities in implementation of the Act.

This can happen by providing support to Public Authorities for training, development of software applications, e-Training modules, generating awareness amongst citizens, etc.

The role of the Information Commission has to go beyond the hearing of the appeals. As per the Act, they are expected to issue orders/directions to the Public Authorities to carry out their duties as per the mandate of the Act. However, till the time Information Commission assumes the role of ensuring the compliance of the RTI Act by the various Public Authorities, there would not be any control mechanism. The State Government has to play a facilitative role to the Information Commission through issuance of supporting rules/orders to the Public Authorities.



*“Knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family”.* So said Kofi Annan, former Secretary General of the United Nations and co-recipient of the Nobel Prize for Peace in 2001. Information means power for the poor and the weak, for it gives them a powerful tool to fight for their rights of a better livelihood through access to government welfare schemes and programmes. Though the founding fathers had enshrined various rights in the Constitution itself, right to information was not specifically mentioned. This lacunae was filled by the passing of the Right to Information Act in 2005. This act revolutionized the functioning of government departments who realized that they were, from then on, answerable to the common man, whom they had been, often taking for a ride. It enforced the concept of accountability among government officers to the citizen of India.

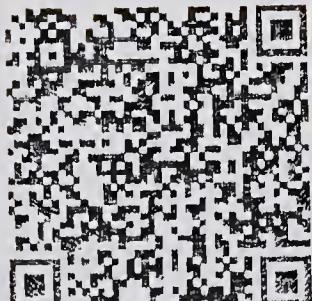
This book talks about the genesis and development of the right to information movement, provides insights into the clauses of the Act directly impacting the common man, offers case studies and judgements as examples of implementation of the Act and finally the Act itself as an annexure.

The author is an advocate with the Delhi High Court and Fellow, Indian Council of Arbitration.



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